

Demanding accountability

Strengthening corporate accountability and supply chain due diligence to protect human rights and safeguard the environment



Lessons from ten case studies of the Indonesian palm oil sector

June 2021

Authors

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Front cover: Activists demonstrate outside offices of the Mitsubishi UFJ Financial Group to protest against MUFG and MUFG subsidiary financing for industrial palm oil producers whose operations are associated with human rights abuse, land grabbing and deforestation, including the Sinar Mas Group, Salim Group and PT Astra Agro-Lestari (Jardine Matheson Group)
Credit: TuK INDONESIA

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Executive Summary

This report is based on a careful review of the connections between ten controversial oil palm plantations in Indonesia and the companies that invest in them or that trade, process or manufacture consumer goods from their products (See Figure 1). The plantations investigated are declared holdings of Astra Agro Lestari, First Resources, Golden Agri Resources-Sinar Mas and Salim (Indofood) groups. Human rights abuses identified include the denial of indigenous peoples' rights, expropriation of community lands without consent, involuntary displacement, violations of environmental rights, repression, harassment, criminalization and even killings of human rights defenders. Despite these very serious, long term and well documented human rights abuses and environmental damage, on the ground, major downstream companies continue to invest in, or source products from these plantations, often without recording the social harms they are causing or demanding remedy for violations.

Downstream companies investigated include Cargill, Nestlé, PepsiCo, Unilever, Wilmar International, Archer Daniels Midland and AAK. Prominent financiers and investors include, Blackrock International, ABN-AMRO, Rabobank, Standard Chartered, Citigroup, Lloyds Banking Group, JP Morgan Chase, as well as different pension funds and Asian banking groups. Most of the downstream companies investigated, and some of the investors, are prominent members of the Roundtable on Sustainable Palm Oil and other sustainability initiatives. Yet, despite the fact that the violations uncovered are clearly contrary to RSPO standards, as well as the companies' own 'No Deforestation, No Peat and No Exploitation' policies, the trade and investment continues unchecked.

The report highlights a range of demands on supply chain actors made by affected communities, including calls on international finance businesses and downstream companies to **investigate** the cases concerned and address human rights impacts and unresolved grievances. Specific community demands for **time-bound action plans** to facilitate land restitution and reparations are also made on Sime Darby, Cargill Inc, Astra International Group/Jardine Matheson, AAK, Nestlé, PepsiCo, Wilmar and Unilever. Affected communities emphasise the need for dedicated and transparent follow up and **monitoring of remedial measures and agreements**. In some cases, downstream companies are requested to **suspend purchasing** of palm oil from harmful suppliers, such as PT Kurnia Luwuk Sejati.

The report additionally presents actionable recommendations for government law makers developing statutory regulations on corporate governance and sustainability regulations for 'forest-risk' supply chains. It is emphasised that to be effective statutory regulation of businesses and supply chains must ensure, *inter alia*:

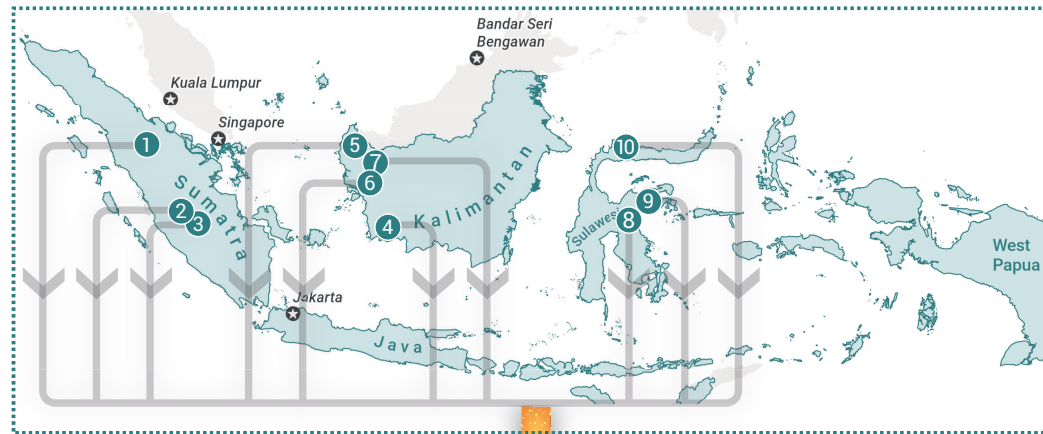
- Requirements on corporations to identify, address and remedy impacts in their supply chains and portfolios
- Establishment of robust monitoring, verification and enforcement mechanisms to support compliance
- Strong sanctions for companies in violation of applicable due diligence laws and supply chain regulations
- Access to judicial remedy in the courts of the country where companies are domiciled for rights holders and communities negatively affected by their operations, business relations and investments.

Case study locations and palm oil supply chain actors

Mills

Indonesia

1. PT Pancasurya Agrindo – TAMBUSAI Mill
2. PT Sari Aditya Loka – PT SAL 1 Mill
3. PT Kresna Duta Agroindo – Jalatang Mill
4. PT Harapan Sawit Lestari – MANISMATA Mill
5. PT Mitra Intisejati Plantation – Bengkayang Mill
6. PT Perkebunan Nusantara XIII – Kebun Gunung Meliau Mill
7. PT Mitra Austral Sejahtera – PT MAS Mill + Plantation
8. PT Agro Nusa Abadi – Agro Nusa Abadi Mill
9. PT Kurnia Luwuk Sejati – Toili Mill
10. PT Hardaya Inti Plantations – Leok Mill



Supply chain actors

US

- A. Cargill
- B. ADM
- C. PepsiCo

Europe

- D. Unilever
- E. AAK
- F. Nestlé
- G. Jardine Matheson

UK

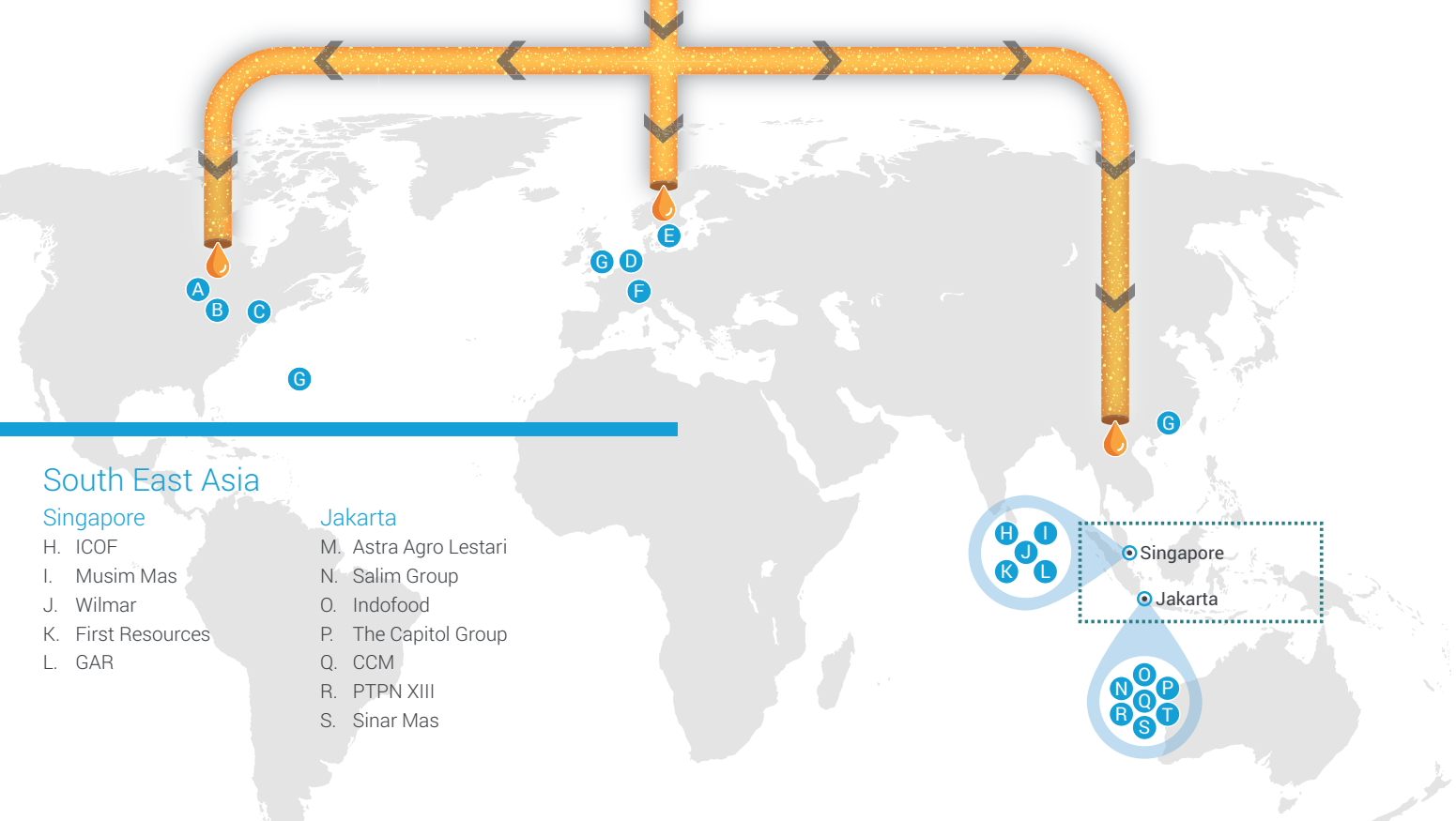
South East Asia

Singapore

- H. ICOF
- I. Musim Mas
- J. Wilmar
- K. First Resources
- L. GAR

Jakarta

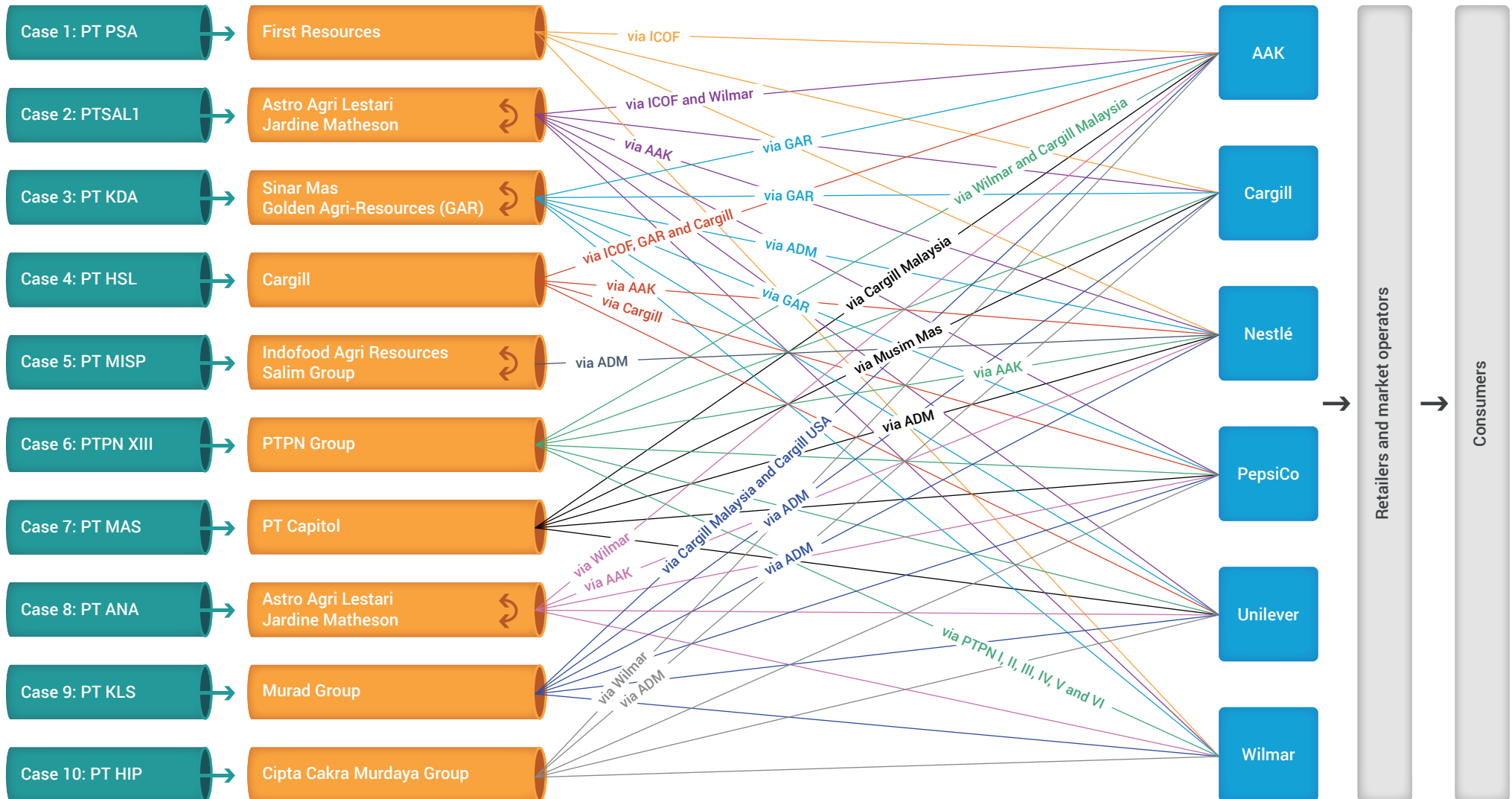
- M. Astra Agro Lestari
- N. Salim Group
- O. Indofood
- P. The Capitol Group
- Q. CCM
- R. PTPN XIII
- S. Sinar Mas



Supply chain connections

Level Upstream producers and suppliers Intermediary level traders and suppliers Downstream companies and transnational businesses

Actor Mill and plantations Corporate groups and parent companies International traders, buyers and operators



Part I.

Introduction: Demanding change to eliminate harms in global commodity production, trade and finance



Forest clearance for large-scale oil palm plantations in Riau, Sumatra, Indonesia. Credit: Rhett A Butler / Mongabay

Dirty chains

As the world enters the third decade of the 21st century, the expansion of the commodity frontier funded by the global financial system continues to drive massive social, environmental and climate harms.¹ In the agri-business sector, supply chains for palm oil,² beef,³ sugar,⁴ rubber,⁵ soybean,⁶ cotton⁷, fruit⁸ and bananas⁹ are frequently stained by embedded human rights and environmental abuses committed upstream at the point of production.¹⁰ Agri-commodity markets are also infected by corrupted products¹¹ and laundered illegal commodities supplied by banned producers who are the subject of judicial sanctions for illegal deforestation and rights abuse.¹² At the same time, a growing body of science links large scale land conversion to agricultural monocultures for the production of commodities to the emergence and spread of harmful disease and pandemics.¹³

Global trade and business in extractive products like timber,¹⁴ gold,¹⁵ and diamonds, sourced in Latin America, Africa and Asia, are likewise contaminated by laundered illegal products and 'legal' commodities associated with gross human rights abuse, killings, sexual violence, forced evictions, forced labour, slavery, child labour, large-scale illegal deforestation and irreparable damage to water and other livelihood resources.¹⁶ A significant proportion of international agricultural and extractive commodity flows are proven to be linked to violent criminal trade in illicit drugs, human trafficking and large-scale fraud and corruption, often active in clandestine operations in intact forests and on the deforestation frontier.¹⁷ Communities, local people and their leaders who challenge destructive commodity production, trade and associated illegal resource use – face intimidation, death threats, criminalisation, harassment, defamation, and violent attacks on their families and communities.¹⁸ Their organizations often experience break-ins and stealing of their equipment and documents, and attacks on their means of collectively protecting their lands.



Large scale forest conversion for oil palm plantations in W Kalimantan, Indonesia is associated with human right abuses, including land expropriation, involuntary displacement of communities, and damage to livelihood resources. Damages to biodiversity, water resources and the climate result in violations of community rights to food, water and a healthy environment
Credit: Rhett A Butler / Mongabay

Much of the global process of aggressive industrial expansion has been fuelled by state-led policies for economic growth and financed by public and private financial institutions like the World Bank, International Finance Corporation (IFC), export credit agencies¹⁹ and numerous private banks, pension funds, investors and other financiers. In 2021, public development finance institutions and private banks continue to pump large financial flows into mega infrastructure programmes for road and rail development that aim to open up the final forest frontiers for commodity production in the heart of Borneo²⁰, the Congo Basin²¹ and the Amazon.²²

Behind the expanding commodity frontier, agribusiness and extractive industries have left a historical wreckage of injustice, social and environmental damage, dispossessed indigenous peoples, displaced populations, wholesale forest and habitat loss, poisoned rivers and the concentration of land, wealth and power in corporations, powerful industrial elites and large landowners. **Unresolved community grievances** stemming from the aggressive global expansion of infrastructure and commodity production in the past three decades remain outstanding up until today, and often continue to generate conflict, marginalisation and repression (e.g. see Part II).

This global pattern of commodity driven displacement, usurpation of community lands, deforestation and climate damage continues unabated. Reports from the frontline during the pandemic of 2020-21 indicate that harms associated with commodity trade are *intensifying* and set to cut yet deeper as producer countries and industry seek to 'rollback' regulation and enable economic 'recovery'.²³

Demanding corporate accountability and economic transformation in the 21st century

For several decades Indigenous peoples, human rights organisations, environmental groups and corporate justice movements have been calling for major reforms to clean up international supply chains and ensure greater accountability of corporate actors and financiers to remove social and environmental harm from global commodity and financial flows.²⁴ Indigenous peoples and communities impacted by harmful global commodity trade call for binding statutory regulation of commodities and companies to uphold human rights, protect indigenous territories and remove "embodied" rights abuse and environmental destruction from commodities.²⁵

At the same time, social movements and the UN are calling on companies and financiers to upgrade their social and environmental governance systems to **commit** to and **take actions** to ensure **zero tolerance** to land grabs, killings and violence against human rights and environmental defenders in their business operations and investments.²⁶ Civil society organisations have issued new calls and proposals for more *specific due diligence* by companies and the finance sector to address the most extreme impacts and risks of human rights abuse linked to attacks and repression against community leaders, human rights defenders and whistle blowers.²⁷



Sasak Dayak communities protest against international financing of oil palm plantations affecting their lands in Sambas District, Kalimantan
Credit: Marcus Colchester / FPP

Increasingly, NGOs are calling for much greater corporate transparency and accountability, including via company **information disclosure on supply chains**, including identification of third party suppliers. They are also demanding more **rigorous independent verification** of supply chain compliance with applicable standards and corporate commitments on human rights and the environment.²⁸ Civil society organisations are also highlighting the need for more independent audit frameworks and more credible Environmental and Social Governance (ESG) ratings by industry ‘service providers.’ There are also growing calls for businesses to adopt and disclose **non-compliance action protocols**, setting out what a company or financier will do in practice on detecting non-compliance in their supply chain or portfolio.²⁹ In this context, NGOs and rights holders are urging agribusiness and other companies to meet international standards on business and human rights by publishing their due diligence procedures, methods and practices, including their standard operating procedures, to ensure accountability and transparency for citizens and affected communities.³⁰

In conjunction with demands for greater legal regulation, accountability and transparency of businesses and the finance industry worldwide, indigenous peoples and climate justice movements are calling for transformations towards sane, humane, equitable and agro-ecological economic systems, alternative economies and a move away from industrial chemical-based monocultures and economic growth models grounded in large-scale extraction and industrialisation.³¹ Scientists and activists alike warn of pending ecological collapse on a planetary scale unless major urgent action is taken to address abusive and unsustainable trade and consumption. As the global climate crisis accelerates, climate justice and youth movements are calling for economic and eco-social transition to sustainable economies and societies globally.³²

Failings in corporate governance and accountability

Despite the plethora of supply chain reform initiatives and all the numerous corporate voluntary initiatives in existence and under development, (Annex I) major harmful global supply chain impacts and weak implementation of agreed industry standards are commonplace, and in some cases getting *worse*. Voluntary certification schemes only cover a portion of global markets and producers. Where they are applied, they continue to be ineffective due to **weak compliance and assurance frameworks** that suffer conflicts of interest and methodological problems in their audit systems.³³ Most businesses, large, medium and small, have **ineffective due diligence systems** in place to uphold their human rights responsibilities and commitments. In 2019, for example, the Corporate Human Rights Benchmark (CHRB) initiative found that out of 195 large global companies surveyed, 49% score between zero and 10% against a set of human rights due diligence indicators, while only *one* scored above 80%, demonstrating a systemic failure of accountability in the corporate sector on human rights.³⁴

Corporate pledges to remove deforestation from supply chains have not been met. Companies pledging zero deforestation have now re-set timelines and targets during the next decade to 2030.³⁵ Numerous reviews indicate that missed corporate targets on forests and non-exploitation can be partly traced to **defective due diligence and supply chain management and weak remediation and monitoring frameworks**.³⁶ At the same time, more than half of the world's largest businesses dealing in soybean, beef, palm oil and other conflict commodities still have *no* public commitments on tackling deforestation.³⁷ The lack of corporate policies and action to tackle human rights abuse, forest loss, harmful land use change and climate damage is particularly acute in the international finance industry. Many global investors and private financiers, including major players like BlackRock, have no policies at all in place to prevent large financial flows enabling commodity driven land grabbing and deforestation, even if in 2020-21 the sector and key actors like Blackrock are rightly finally making moves to require transparency on climate and human rights impacts in the finance sector.³⁸

Companies and governments are responding to ongoing demands for change through a range of measures and initiatives. Business and industry now advise they are seeking sector-wide reforms and 'shared' approaches to sustainable commodity production. Commodity certification schemes are pledging to improve their compliance and audit systems in the face of ongoing public criticism and denouncements by indigenous peoples and affected communities (see Annex I). Governments and public policy makers are also responding to the growing body of evidence that soft law and voluntary approaches are insufficient to promote significant change. Some global businesses and investor groups also now accept that mandatory standards on due diligence are required to 'level the playing field', though their support for strong enforcement frameworks is less apparent (Annex).

In recent years, a number of consumer countries have adopted or are in the process of formulating legislation to require businesses to conduct due diligence and improve corporate conduct. In 2017, France adopted a Duty of Vigilance Law to require large companies domiciled in France to conduct human rights and environmental impact assessments of their supply chains, and to develop actions plan to address problems identified. Indigenous peoples and civil society allies are now testing these new legal instruments in the courts by seeking redress for deforestation and harm to rights driven by beef production and supply chains in the Colombian and Brazilian Amazon.³⁹

Other countries, including the UK and US, are developing laws to regulate 'forest risk commodities', though human rights groups including Forest Peoples Programme (FPP) have raised concerns over their scope and approach, which could generate perverse outcomes by failing to uphold international human rights standards (See Annex). The EU is likewise currently considering mandatory due diligence legislation for forest risk commodities. In January 2021, the legal affairs committee of the European Parliament issued a report calling on the Commission to develop binding rules under legislation on corporate due diligence. The Parliamentary report advises that the law should require all companies wishing to access the EU market (including those domiciled outside the EU), to prove that they comply with environmental and human rights due diligence obligations (see Annex).⁴⁰

United Nations treaty bodies and other human rights mechanisms are likewise urging States to place legal obligations on companies in their jurisdiction to uphold human rights. In March 2021, for example, the UN Committee on Economic, Social and Cultural Rights (CESCR) recommended that Finland:

...adopt a regulatory framework on human rights due diligence making it compulsory for companies domiciled in the State party or under its jurisdiction to identify, prevent and address human rights violations in their operations, including abroad. Such companies should be liable for violations. Victims, including non-nationals, should be able to access effective remedies in the State party. Moreover, the Committee urges the State party to conduct investigations when reports of human rights violations by Finnish companies are brought to its knowledge.⁴¹

Purpose of this report

The main body of this report reviews ten global palm oil supply chain cases connected with upstream producers in Indonesia and downstream companies, traders and financiers in Europe, the US and Southeast Asia. The report seeks to highlight human rights impacts, document ongoing unresolved community grievances, and set out specific community and civil society demands in relation to different supply chain actors in each case (Part II and Part III). A human rights-based analysis is applied to pinpoint lessons and make recommendations for action by different actors, including companies, investors and financial institutions as well as public policy makers and legislators working on corporate governance reform and standard-setting for the legal regulation of supply chains - in both consumer and producer countries (Part III).



'As mothers we can only give birth to children not to land. Don't let them take our children's land away. Otherwise, where will they live?'
– Dayak woman speaking to a public meeting, Sambas District, West Kalimantan, Indonesia demanding justice for the taking of land and forest by oil palm companies without free, prior and informed consent of communities
Credit: Marcus Colchester / FPP

Part II.

Case studies



Community members and smallholders outside the Office of the Governor of Jambi protesting against illegal palm oil concession permits affecting their lands and forests
Credit: Sophie Chao

This section examines ten palm oil producers and processors in Indonesia currently supplying global markets in the EU, UK and US and elsewhere. The analysis aims to pinpoint impacts on the human rights of indigenous peoples and rural communities and the environment in each case and assess corporate accountability to affected rightsholders. Upstream, midstream and key downstream supply chain actors causing, contributing or connected to the impacts are identified, along with local and international financiers and investors funding the palm oil producing and processing parent corporate groups involved.⁴² In addition to a review of impacts and their causes, the human rights and NDPE commitments of parent groups, or absence of same, are noted alongside actual performance in terms of supply chain transparency, respect for human rights, including community tenure, and protection of high carbon stock and high conservation value forests and other ecosystems, including water resources.

II. A - Methodology and information sources

Supply chain connections between plantations, palm oil mills, refineries, parent corporate groups and downstream traders and buyers, including five major transnational food and beverage manufacturing and retail companies, are identified using the 2020 Universal Mill List. Supply chain relationships have been verified *where possible* using company palm oil supplier lists for 2018-2020. Specifically, Indonesian supplier lists have been reviewed for Unilever, PepsiCo, Wilmar International, Cargill Inc, Nestle, ADM, and AAK, according to each case. Where information is available, financiers, lenders, and investors have been identified using the civil society “forest and finance” database.⁴³ Deforestation data inside oil palm concessions and mill plantations is taken from the land use and tree cover change database of CIFOR (Kalimantan)⁴⁴ and information from secondary sources cited.

Evidence on supply chain human rights, tenure and environmental impacts and **unresolved community concerns and grievances** is drawn from civil society reports, academic and scientific studies, the environmental justice atlas (EJA), and the RSPO complaints case tracker,⁴⁵ where applicable. Other sources include local, national and international media and press reports in Bahasa and/or English.⁴⁶ Verification of the current situation on the ground has been conducted through FPP field visits and via FPP interviews with key indigenous and local civil society organisations working on the cases reviewed, often through engagement over many years. Direct communications with local organisations working directly with affected communities continued throughout the study, including during the final stages compiling this report in March and April 2021.

Limits and scope: This report does not claim to be an exhaustive supply chain mapping exercise, and not all supply chain actors are identified. Several Tier 1 suppliers and global palm oil processors and traders, have not been investigated or documented in this report (e.g. AAA PTE Ltd). Efforts have been made to obtain relevant information for input to the analysis of each supply chain case, but some information is not publicly available. This is the case, for example, in relation to the standard operating procedures of some companies included in the study (e.g. in relation to land tenure and FPIC). While identification of high-level global financing connections to corporate groups and agribusiness parent companies has been possible in eight of the ten case studied, data on investments and loans made through financial intermediaries to the subsidiaries of parent groups is not readily available and beyond the scope of this study. In some cases, no public information has been found on financiers and investors funding a number of upstream palm oil producing businesses in Indonesia (e.g. Cases #9 and #10). Reference to grievance trackers and the inclusion of cases was valid at the time of research. Grievance logs may have been updated by the companies concerned in response to FPP sharing of a draft of the findings in March or subsequent to publication of this report.

II.B Case studies

Case study information is presented below. Core findings, common patterns in supply chain problems and lessons are drawn out from each case with recommendations for corporate due diligence and accountability reforms in Section III.

II.B.1 First Resources			
Supplier company	PT Pancasurya Agrindo (PT PSA)		
Location	Rokan Hulu, Riau, Sumatra		
Affected rights holders	Residents of Tambusai Timur, Tambusai Utara and Kepenuhan Hulu villages		
Human rights/tenure impacts	Land expropriation, land conflicts; violence, killings and multiple rights violations		
Mill/plantation(s)	Tambusai (UML PO1000006268)		
Certification	No		
		RSPO Member	Conflict and complaints
Group(s)	Surya Dumai Group	No	Yes, since 1990s. Complaints raised with district authorities.
Parent company	First Resources	Yes (ordinary)	Conflict reported in ACOP - No
Downstream buyers/traders	Nestlé, Cargill, Wilmar (indirect), AAK (F Resources dropped by Unilever in 2018) ⁴⁷		
Financiers and investors of First Resources	AmBank Group; Bank of New York Mellon; Bessemer Group; BlackRock; BMO Financial Group; California Public Employees' Retirement System (CalPERS); California State Teachers' Retirement System (CalSTRS); Charles Schwab; Credit Agricole; Credit Suisse; Deutsche Bank; Dimensional Fund Advisors; Eaton Vance; Edmond de Rothschild; Equitable Holdings; Fidelity Investments; Florida State Board of Administration; Geode Capital Holdings; International Value Advisors; Invesco; J P Morgan Chase; Legal & General; Manulife Financial; Mass Mutual Financial; MDO Group; Merian Global Investors; Mirae Asset Financial Group; New York Life Insurance; Nippon Life Insurance; NN Group; Nomura; Northern Trust; Oversea Chinese Banking Corporation; Principal Financial Group; Prudential (UK); RHB Banking; Schroders; State Street; TA Associates; Thomas White International; TIAA; UBS; Vanguard.		
Evidence sources	Media, NGO and CBO reports (KAPUK; EJ Atlas; Sawit watch; WALHI Riau, Life Mosaic, FoE EWNl); forestsandfinance.org		
Current status	Unresolved grievances (April 2021)		

Supply chain impacts and grievances: Conflicts associated with Tambusai mill and plantations in Rokan Hulu District are embedded in the Ministry of Agrarian Affairs and National Land Agency allocation of a business use permit (HGU) to PT PSA in 1995 covering 10,600 ha for oil palm cultivation. Company plantation operations encroached onto community lands. Affected community areas and resources include 2,186 ha of customary lands belonging to villagers of Tambusai Timur and Tambusai Utara settlements plus 695 ha of transmigrant land in the former settlement. An additional 700 ha of land is the subject of PT PSA disputes with smallholders of Kepenuhan Hulu village. Persistent demands for land and livelihood justice led by the Farmers

Association for Justice (KAPUK) resulted in a stop-work order laid down by the District government authorities in 2002, which was ignored by the company that continued operations in disputed areas. In 2004, local protests by affected communities led to violent repression by an armed militia linked to PT PSA, which resulted in the killing of three villagers and serious injuries to several others.⁴⁸

Human rights affected: Right to life; customary land rights; FPIC, right to equality before the law; right to freedom of association; right to protest; right to be free from intimidation; right to effective remedy.



PT Pancasurya Agrindo (PT PSA) is a subsidiary of RSPO member First Resources Ltd. The mill and plantation are condemned by affected communities for violent repression of communities, land expropriation and attacks against community residents. Credit: ESRI, Maxar, Earthstar Geographics

Parent NDPE commitments and ESG performance: First Resources is an ordinary RSPO member. The company's 2019 RSPO 'ACOP' progress report claimed direct control over 22,549.50 ha of PO plantations in W and E Kalimantan and in Riau. The Group announced NDPE commitments in 2015.⁴⁹ It has made commitments to uphold FPIC and protect customary tenure rights.⁵⁰ No practical operational policies on respecting tenure and FPIC are available, though the topic is briefly noted in the Groups 2019 Sustainability Report.⁵¹ An RSPO 2019 annual surveillance assessment report⁵² acknowledged only a single land conflict in its operations despite documented evidence of many tenure and social conflicts across the group (see below). Despite PT PSA being listed in the said RSPO audit no reference is made to violent land conflicts. Any report of land conflict was also omitted from its 2018 Sustainability report, which indicates that a 2017 human rights audit (conducted for Nestlé) did not pay attention to land tenure rights.⁵³ Despite a high ESG score-card rankings on sustainability assessment platforms like SPOTT,⁵⁴ First Resources and its subsidiaries are connected with multiple rights violations, community grievances, forest clearance and other environmental damage. In addition to land conflicts in Riau, and despite company denials and flawed HCV auditor reports claiming compliance in E Kalimantan, the First Resources Group and its shadow companies, including subsidiaries of Fangiono Agro Plantations Group (FAP-Agri) and Ciliandry Anky Abadi Group (CAA) continue to be condemned by indigenous peoples, farming communities, workers, trade unions, and civil society for past and ongoing violation of FPIC, extensive forest clearance,⁵⁵ non-compliance with RSPO HCV and new plantings standards in 2019-20, and violations of labour rights.⁵⁶ FPP's analysis of the First Resources Group finds that all but one of CAA Group's companies are associated with land and social conflicts. CAA Group is also linked to more than 4,000 ha of damage to peatland forests between 2015-19.⁵⁷ In the period 2008-

2020, FAP-Agri was associated with more than 50,000 ha of deforestation for oil palm production in their concessions in Kalimantan. In addition to violation of group-level NDPE commitments, evidence suggests that First Resources may be in breach of RSPO membership rules on disclosure of beneficial ownership of subsidiary companies.⁵⁸

Connections to downstream companies and financiers: First Resources is a supplier to Nestlé and Cargill who list the Tambusai mill as an indirect supplier. The mill and group are not identified in Wilmar's refinery mill lists in Sumatra. This mill was not listed in PepsiCo's 2019 disclosed mill list. In 2020, PepsiCo only published Tier 1 palm oil *suppliers* making public scrutiny and traceability in their supply chain difficult in 2020-21.⁵⁹ Wilmar's PT Multi Nabati Sulawesi (Bitung) refinery in Sulawesi is a buyer of PO from First Resources via its subsidiary FAP-Agri, which has been accused of deforestation infractions, although reports of violations of HCS and HCV standards have been downplayed by FAPI-Agri.⁶⁰ Unilever dropped First Resources as a supplier in 2018. In 2019 Unilever reported that it does not have any business relationship with First Resources or its subsidiary CAA (accused of major forest and peat damage).⁶¹ European, UK and US financiers connected with First Resources include Deutsche Bank, Credit Agricole; Credit Suisse, Prudential, JP Morgan Chase, Legal & General, Blackrock, State Street and Vanguard.

Accountability and redress: Neither PT PSA, its parent First Resources nor state land administration authorities have provided remediation for affected communities. Despite being a very well documented community grievance locally and globally, this longstanding case of rights abuse is not acknowledged anywhere by First Resources in its grievance tracker.⁶² It is also not registered in the grievance logs of Cargill, Nestlé or Wilmar. Unilever does record deforestation grievances linked to other First Resources subsidiaries, including CAA via its PT Agrindo Green Lestari and PT Citra Agro Abadi subsidiaries in Central Kalimantan, but claims no existing relationship to this group (see above). With regard to an RSPO audit of non-certified units in First Resources, the PT PSA land dispute case is not reported.⁶³

Current situation: Land conflicts, community grievances and non-compliance are unresolved in Tambusai and more widely in the First Resources Group. Villagers and KAPUK have rejected paltry offers of smallholder land in other areas as compensation for their land losses. The perpetrators of the violent attacks and killings have not been brought to justice, while the community's demands for justice and land restitution are still outstanding at the start of 2021.

"Until now the much-needed proper remedies and rights of the impacted communities have not been resolved properly. We urge investors and buyers of palm oil from PT PSA take and share accountability in upholding human rights remedies. The affected communities are demanding their land be returned."

Riko Kurniawan, Executive Director of WALHI Riau, 2020

II.B.2 Jardine Matheson Group			
Supplier	PT Sari Aditya Loka 1 (PTSAL1)		
Location	Sarolangun Regency, Jambi, Sumatra		
Affected rights holders	Orang Rimba		
Human rights/tenure impacts	Displacement; deforestation; land expropriation; livelihood loss; harassment/ violence		
Mill/plantation(s)	PT Sari Aditya Loka 1 (PO1000004505)		
Certification	RSPO – No; ISPO – Yes (2018)		
		RSPO Member	Conflict and complaints
Group(s)	Astro Agri Lestari - AALI	No	Yes, since 1990s
Parent company	Jardine Matheson Group	No	
Downstream buyers	Nestlé (via AAK); AAK (via Wilmar) Cargill (via AALI); Wilmar; PepsiCo; Unilever (2019)		
Financiers and investors of JJM (2015-20 - millions USD)	Examples: Aviva; AXA; Azimut Group; Baillie Gifford; Banca March; Bangkok Bank; Bank Central Asia; Bank Mandiri; Bank of China; Bank of New York Mellon; Bank Pan Indonesia; BankInvest; Banque Cantonale N; Banque Degroof Petercam; BpfBOUW; Bessemer Group; Blackfriars Asset Management; BlackRock (43.2); BMO Financial Group; BNP Paribas; BPCE Group; Capital Group (19.83); Cathay Financial; Charles Schwab; China Construction Bank; CI Financial; CIBC; Citigroup; City of London Investment Group; Commonwealth Bank of Australia; Corsair Capital Management; Credit Suisse; Daiwa Securities; Danske Bank; DBS; Deka Group; Deutsche Bank; Dimensional Fund Advisors (8.24); DNB; DZ Bank; East Capital; Eaton Vance; Edmond de Rothschild; Goldman Sachs; Government Pension Fund Global (17.81); Government Pension Investment Fund (GPIF); Invesco (10.4); Investec Group; Jackson Square Partners; Janus Henderson; JPMorgan Chase (9.98); Julius B; Kasikornbank; Macquarie Group (7.59); New York Life Insurance; New York State Common Retirement Fund; Nippon Life Insurance; Orbis Group (22.68); Orix Corporation; Oversea-Chinese Banking Corporation; Pacer Advisors; Pacific Century Group; Pacific Investments; Pandal Group; PH&C; Pensioenfond Metaal en Techniek (PMT); Scotiabank; SEI; Shanghai International Group; Shinhan Financial Group; Sjunde AP-fonden (AP7); Standard Chartered; Standard Life Aberdeen (15.68); State Street (6.36); Storebrand; Mitsui Trust; Sun Life Financial (8.27); T. Rowe Price (5.93); TA Associates; Temasek; Toronto-Dominion Bank; Tredje AP-Fonden (AP3); UBS (6.22); United Overseas Bank (102); Value Square; Van Eck Global; Vanguard (42.16).		
Evidence sources	Media, WARSI, RFN, HRW, EJA and academic studies; forestandfinance.org		
Current status	Land and livelihood loss unresolved in April 2021		

Supply chain impacts and grievances: Harmful impacts linked to this plantation and mill commenced more than 40 years ago in the 1970s with forest clearance for oil palm plantations on lands traditionally owned, occupied and used by Orang Rimba communities. Land expropriation involved violence, intimidation, poisoning and brutal forced evictions.⁶⁴ PT SAL obtained a government environment permit in 1995, which was renewed in 2006 without any consultation and no prior agreement with the Orang Rimba.⁶⁵ Deforestation and displacement by industrial palm monocultures have undermined the Orang Rimba traditional way of life based on gathering, hunting and small-scale rotational farming. Some communities have been displaced onto their remaining ancestral forest lands within Bukit Duabelas National Park (designated in 2000),⁶⁶ while more than 750 remain as landless squatters on their own land to the south, which is now controlled by PT SAL1 and covered in extensive oil palm plantations. The affected communities have lost traditional sources of food and income.

They have lost their forests and seen their sacred sites destroyed. Many are now obliged to shelter under plastic sheets within PTSAL1's plantations. Families and settlement groups frequently suffer harassment from company security guards forcing them to move camp and chastising them for setting camps or harvesting palm fruits on their ancestral land for their own consumption to stave off hunger.⁶⁷ Many are forced to beg on the roadside.⁶⁸ Others have been forced to migrate to urban squatter settlements around Jambi City, while Orang Rimba children have been the subject of pressured religious conversion and obligatory schooling.⁶⁹

Human rights affected: Rights adversely affected up until today include Orang Rimba rights to customary land, FPIC, food security, access to water and means of subsistence, traditional livelihood practices and cultural integrity, freedom of religion, freedom from forced displacement, racial discrimination and persecution.

"Before oil palm I was happy. I had a house, garden, and planted rice...When we had the forest, we could use plants as medicines. Now with no forests we can't get medicinal plants and we buy medicines. But getting money to buy things is a challenge...After palm, I am constantly running away from people who want to catch me when I collect fruits."

— Orang Rimba woman, 2018⁷⁰



Orang Rimba communities dispossessed by PTSAL plantations suffer persecution from company security guards as 'squatters' on their own customary lands, which are now blanketed in palm monocultures. Credit: Warsi

Group and parent company NDPE commitments and ESG performance: The parent conglomerate group Jardine Matheson, listed on the London Stock Exchange as worth \$40 billion, has no group-level public commitments on human rights and the environment,⁷¹ though it does make commitments to support the 'local community' and mental health in the workplace.⁷² Jardine Matheson's subsidiary, the Astro Agri Lestari (AALI) group is Indonesia's second largest palm oil producer which has over 40 subsidiaries. It controls nearly 300,000 ha of plantation land. AALI is not a member of the RSPO. It has adopted zero-deforestation and various commitments to FPIC and human rights since 2015, but lacks public operational policies to apply these standards.⁷³ The company has a rudimentary internal complaints portal, but with no details on procedures or guarantees for complainants.⁷⁴ It claims to have adopted a *Sustainability Policy Implementation Action Plan* for the period 2016-20, including a human rights strategy aligned with the UNGPs, and

to have conducted workshops with suppliers on this policy. The company reports that it has put in place a system to monitor group-level suppliers in order to ensure that none of its suppliers are committing any violations on deforestation, forest burning and peatland destruction.⁷⁵ Despite these claims, the company and its plantations continue to be linked to deforestation, unresolved land conflicts and disputes with communities and civil society in different parts of Indonesia, including in Sumatra, W Kalimantan, Aceh and Central Sulawesi.⁷⁶

Connections to downstream companies and financiers: PT SAL1 supplies Wilmar (PT Wilmar Nabati Pelintung refinery),⁷⁷ PepsiCo, Nestle, Cargill and AAK (via Wilmar). In the case of Unilever, PTSAL1 was listed in its 2019 supplier list. Musim Mas⁷⁸ and Archer Daniels Midland-Hamburg⁷⁹ and ADM Antwerp⁸⁰ are buyers of PTSAL palm oil and both groups supply Unilever, which is thus likely connected via these suppliers. In May 2020 the company stated “Unilever has no direct sourcing relationship with [AALI] but may be exposed through our direct suppliers,” without giving further details.⁸¹ UK, US and European international financiers, including pension funds, connected with the Jardine Matheson Group include Standard Aviva, Life Aberdeen, Danske Bank (N Ireland), City of London Investment Group, Goldman Sachs, New York State Common Retirement Fund, and Sjunde AP-fonden (AP7) and Algemeen Burgerlijk Pensioenfonds. Canadian and Australian banks and investor groups are also connected to financing of this conglomerate, including the Toronto-Dominion Bank, Caisse de placement du Quebec and the Macquarie Group.

Accountability and remedy: The case of the Orang Rimba and PT SAL is not included in AALI’s grievance register.⁸² It is also absent from the grievance logs of Cargill,⁸³ Wilmar,⁸⁴ while grievance information from PepsiCo⁸⁵ and Nestle is inadequate to determine any logging of this case at either the mill or group level. The mill is also absent from the grievance registers of ADM⁸⁶ and AAK,⁸⁷ though ADM does log one grievance linked to AALI, but records it as unfounded. *After 30 years of well publicised injustice and violation of corporate CSR commitments over the past decade in relation to the oil palm sector impacts on the Orang Rimba, there appears to be effectively zero AALI Group accountability to affected communities and little or no accountability of connected downstream agribusiness, food and beverage companies to the same dispossessed, aggrieved and abused rights holders.*⁸⁸

Current situation: AALI continues to reject accusations of harmful impacts on the Orang Rimba as unfounded and driven by “anti-palm oil” NGOs.⁸⁹ It is prolific in issuing press notices extolling company virtues in providing food packages to “alleviate starvation” of the Orang Rimba.⁹⁰ PT SAL boasts food security and education programmes for Orang Rimba children and claims to hold “continuous consultation” with communities to “understand their needs”.⁹¹ For their part, the Orang Rimba rights holders and their allies like Warsi continue to demand land justice and restitution of customary territory taken without consent three decades ago. At the same time, Orang Rimba communities continue to suffer persecution, intimidation and destruction of their camps by company security personnel, including during the 2020 pandemic.⁹²

Efforts by PT Astro Agri Lestari to solve conflicts do not reflect the commitments stated in supply chain policies. Because of the ongoing conflicts and unresolved land problems, we demand that investors and markets stop all financial services to PT Sari Aditya Loka 1 until justice is enjoyed by all of the affected communities

— **Director, WALHI Jambi, 2020**

“Orang Rimba indigenous peoples have been in conflict with PT SAL, a subsidiary of Astra Agro Lestari in Jambi Province since 1980s. The demand for restitution of Orang Rimba’s customary land had been gone through several rounds of negotiation between Orang Rimba and PT SAL assisted by KKI Warsi which is later mediated by National Human Rights Institution (Komnas HAM). But PT SAL is not prepared to return the said Orang Rimba’s customary land up to today. According to joint participatory mapping by KKI Warsi and Orang Rimba indigenous peoples, there are 500 hectares of customary land currently planted with nucleus oil palm plantation owned by PT SAL. Orang Rimba are demanding immediate restitution of 500 hectares of their customary land for 220 households of Orang Rimba. We are now calling on palm oil buyers from Astra Agro Lestari like Unilever, Nestle, PepsiCo, Cargill and Wilmar as well as other downstream actors to share responsibility and work in collaboration to support land restitution for Orang Rimba in PT SAL,”

— **Ade Candra, KKI Warsi, 2020**

II.B.3 Golden Agri-Resources (GAR)/Sinar Mas			
Supplier	PT Kresna Duta Agrindo (PT KDA)		
Location	Pauh Subdistrict, Sarolangun District, Merangin Regency, Jambi Province, Sumatra		
Affected rights holders	Residents of Karang Mendapo, Lindung, Batu Ampar, Ladang Panjang, Pengindaran and Kasang villages		
Human rights/tenure impacts	Land conflicts; land expropriation; police shootings, repression, and intimidation of local farmers; water and air pollution; deforestation		
Mill/plantation(s)	Jelatang (UML: PO1000001344)		
Certification	Yes (RSPO)		
		RSPO Member	Conflict and complaints
Group(s)	PT SMART tbk	Yes	Yes, going back to 1987
Parent company	GAR/Sinar Mas Group	Yes	Grievances known to GAR via community representations
Downstream buyers/traders	Nestlé (via ADM); PepsiCo (via GAR); Cargill (via GAR); AAK (via GAR); Wilmar; Unilever (2019)		
Financiers/Investors (million USD 2015-20) – to Sinar Mas Group	Mitsubishi UFJ Financial Group (MUFG) (667); RHB Banking; Oversea-Chinese Banking Corporation (207); CIMB Group; Credit Suisse; Silchester International Investors (157.7); Vanguard (17.9); BlackRock (7.9); Banco de Sabadell (46); Malayan Banking (447); Bank Negara Indonesia (635); Bank Pan Indonesia (583); Bank Mandiri (45); Bank Central Asia (154); State Bank of India; Rabobank (475.5); First Abu Dhabi Bank; Citigroup; China Development Bank; ABN Amro (226); ICICI Bank; Kopernik Global Investors (277); Dimensional Fund Advisors (14.3); Orix Corporation (8.3); Société Générale; The Investment Fund for Foundations; Banco Mediolanum; Goldman Sachs; Allianz; Sjunde AP-fonden (AP7); etc		
Evidence sources	Sawit Watch; local press and media; FPP; forestandfinance.org		
Current status	Unresolved longstanding land disputes between communities and PT KDA		

Supply chain impacts and grievances: Grievances against PT KDA and its Jelatang estate date back more than thirty years to 1987 when the Indonesian state allocated 9,000 ha of land to the company to develop plasma plantations. Affected transmigrant communities protest that company HGU business use permits have encroached on their community land and family holdings leading to numerous disputes and the intimidation of local farmers harvesting fruit on their own property, which PT KDA claims is within the company's HGU land. Lack of transparency in company disclosure of original land exploration permits (ijin lokasi) is a further complaint alongside community denouncements of serious repression and criminalisation of plasma producers. The company is also accused of fomenting land conflicts between villages.⁹³ In the case of Karang Mendapo village, land disputes came to a head in 2011 when mobile armed police brigades (Brimob) shot at local farmers causing injuries to six victims as they collected fruit bunches on their own palm plantings.⁹⁴ PT KDA original permits for forest clearance are contested by numerous affected communities who report extensive damage to community forests and wildlife habitats, including areas used by the Sumatran elephant.⁹⁵ Damage to rivers, drinking water supplies and persistent air pollution linked to Jelatang mill are also condemned by villages up until today, while smallholders and plasma out-growers complain of low prices for their product and exploitation by PT KDA.⁹⁶

Human rights affected: Rights to land, FPIC, livelihood security, a healthy environment, freedom from harassment and intimidation; equality before the law and right to remedy.



Communities affected by the operations of GAR/Sinar Mas and PT SMART subsidiary PT Kresna Duta Agrindo (PT KDA) accuse this palm oil producer of causing land conflicts and using armed police to suppress community protests
Credit: ESRI, Maxar, Earthstar Geographics

Parent NDPE commitments and ESG performance: PT KDA and its several palm oil mills and plantations, including Jelatang Mill (JLTM), are owned by the PT Sinar Mas Agro Resources (PT SMART Tbk) group. PT SMART Tbk is a subsidiary of Golden Agri-Resources (GAR), and both are RSPO members. GAR is the world's second largest palm oil producer with more than 0.5 million Ha of oil palm plantations under its control.⁹⁷ It has made public NDPE commitments since 2011 and has a forest conservation policy that applies to third party suppliers (2014). It also has a social and community engagement policy (SCEP) and is a member of the NDPE Implementation Reporting Framework (NDPE IRF).⁹⁸

In 2017, GAR became the first palm oil company to be listed on the Dow Jones Sustainability Index, but was removed from the list in 2019 due to proven widespread evidence of ongoing corruption, land grabbing and deforestation in its operations in Indonesia and Liberia – in clear violation of RSPO standards, including non-compliance with FPIC and HCV social and tenure standards, also contrary to its own social and environmental policies.⁹⁹ GAR has persistently refused to address and settle land conflicts with Indonesian communities. Despite rulings from the RSPO Complaints Panel calling on the company to remedy community land tenure grievances in the case of PT KPC in Kalimantan, for example, the company has failed to resolve community complaints.¹⁰⁰ In 2020 FPP and Elk Hills Research filed a further complaint with RSPO against GAR exposing its conviction for bribery, the use of illegal land use change permits issued by local government authorities in C Kalimantan over 75,000 ha of forest, coupled with persistent violations of the RSPO new planting procedure standard since 2010.¹⁰¹

Linkages to downstream companies and financiers: In 2020 PT KDA and its Jelatang operation supplied Pepsi Co, Cargill and AAK via GAR, and also Nestlé via ADM. The mill was detailed on Unilever’s 2019 mill list and is likely still an indirect Unilever supplier via GAR. Unilever suspended buying from GAR in 2015 but restarted buying in 2017 even though outstanding complaints upheld by the RSPO Complaints Panel remained unresolved. Wilmar does not source from this mill, but does source from various mills of the PT SMART tbk group that supply Wilmar PT Sinar Alam Permai in Palembang (S Sumatra).¹⁰² In terms of financiers, it is noteworthy that large scale finance has been provided by European and US banks and investment firms. Some, including Rabobank and ABN Amro have detailed human rights policies,¹⁰³ while others such as US investment group Copernicus only provide superficial public commitments on environmental and social governance, without details of their due diligence safeguards and practices.¹⁰⁴ Asian banking groups financing Jardine Matheson and the Astra Agro Lestari Group, include the Mitsubishi UFJ Financial Group (MUFG), which is denounced by civil society groups for financing AALI and other agribusiness companies in Indonesia that are causing harm to human rights, forests and the climate.¹⁰⁵



Human rights and environmental activists demonstrate in April 2021 outside the Indonesian finance authority building to protest against Mitsubishi UFJ Financial Group and subsidiary banks financing for Sinar Mas Group and other palm oil corporate groups
Credit: TuK INDONESIA

Accountability and redress: Communities affected by PT KDA operations in Sarolangun District have repeatedly raised concerns with district and national authorities about improper land acquisition, police brutality and repression linked to the company. PT KDA refuses to accept community claims and dismisses their land tenure grievances, challenging them to take the company to court to prove the HGU is invalid, while land settlement negotiations brokered by local government drag on (see below). There appears to be limited or zero corporate accountability via the RSPO to date. Despite numerous documented land conflicts and violence linked to the Jelatang estate, the mill and plantation received RSPO certification in 2014. Subsequent audits by Sucofindo International Certification of PT KDA have continued to fail to register serious, unresolved land disputes claiming there are no land conflicts and no complaints in the company log from internal or external parties.¹⁰⁶ Community efforts to engage in dialogues with the parent GAR on the margins of the RSPO annual assemblies since 2012 have not yielded any justice either for adversely affected farmers or the victims of police violence.¹⁰⁷ With regard to other complaints against GAR and PT SMART and its subsidiaries in different parts of Indonesia, there is likewise little progress. FPP's and TUK's 2014 complaint to the RSPO regarding Golden Agri-Resources Ltd's subsidiary PT Kartika Prima Cipta's violation of community land rights and FPIC in W Kalimantan remains 'in progress' **six and a half** years after the complaint was first submitted.¹⁰⁸

In relation to parent groups and downstream companies, there is no apparent accountability nor recognition of unresolved grievances linked to this PT KDA case in Jambi. It does not appear in GAR's 2020 grievance list.¹⁰⁹ Nor does it appear in the grievance logs or transparency dashboards of Nestlé, PepsiCo, Cargill or Wilmar, though a few other non-compliance cases linked to GAR in other locations in Indonesia, are registered in the logs of Cargill, Unilever and Wilmar, but without clarity on remedies provided (see Case #7 below).

In terms of private international **financial institutions, effective accountability to affected communities is weak and in practical terms close to zero.** Directly challenged by Indonesian rights holders for loans and investments to destructive palm oil groups in Indonesia and elsewhere (including re GAR subsidiary GVL in Liberia), sustainability staff at Rabobank, for example, claim that there is not much they can do to address existing harms as they are "not directly connected." They are also unwilling to commit to stop funding harmful groups or making major reforms to exert more leverage in their portfolios including unsustainable agribusiness groups and conglomerates.¹¹⁰

Current situation: Community demands for land restitution and the settlement of tenurial disputes remained unresolved in 2020. The Sarolangun District Government continues to mediate efforts to resolve land conflicts between PT Kresna Duta Agroindo (KDA) and affected communities. Aggrieved community rights holders and local leaders still maintain that their core objection is that PT KDA has encroached on community lands of at least four villages with illegitimate HGU permits, while company officials continue to dismiss community concerns.¹¹¹

We gave part of our land to PT KDA for a partnership 70:30 scheme under which PT KDA would get 70% and communities landowners were supposed to get 30% after deductions for land clearing, planting, seedlings, fertilisers, etc.. On paper it is written 250 hectares but actually our village's land planted with PT KDA oil palms covers up to 500 hectares based on map of our administrative village boundaries with neighbouring villages. Now I have been 8 years in service as head of Batu Ampar village but until two last meetings of RSPO Roundtable in Singapore and Medan in 2013 the company still failed to fulfil our legitimate demand. I know that PT KDA people don't dare to visit my village. We got nothing from this scheme. Promised profits have never been shared and distributed to our community. We don't want to continue this failed partnership any longer. We just want PT KDA to return our land. We don't want and try our best to avoid being trapped in conflict with others or neighbouring village. Since our deal is with PT KDA so we just want PT KDA to take responsibility and not blame other neighbouring villages.

— **Community leader, Batu Ampar Village, 2020**

II.B.4 Cargill Inc.			
Producer supplier	PT Harapan Sawit Lestari (PT HSL)		
Location	Manis Mata sub-district, Ketapang District, W Kalimantan		
Affected rights holders	Dayak Jelai indigenous communities		
Human rights/tenure impacts	Illegal land acquisition; violation of FPIC; damage to cultural sites, pollution, criminalisation of IP leaders etc		
Mill/plantation(s)	Manis Mata (UML PO 1000001208)		
Certification	Yes – RSPO and ISCC		
		RSPO Member	Conflict and complaints
Group(s)	PT Harapan Sawit Lestari	n/a	Yes – since 1990s. A single RSPO complaint re 1 village in 2018
Parent company	Cargill	Yes	
Downstream buyers/traders	Nestlé (via AAK), Unilever (2019) PepsiCo (via Cargill); AAK (via Cargill)		
Financiers and investors to Cargill (2015-20) millions USD	ABN AMRO (21.53); ANZ; Bank of America (104.8); BNP Paribas (125.8); Rabobank (28.2); DBS (16.3); Deutsche Bank (55.2); HSBC (53.8); ING Group (27.9); Mitsubishi UFJ Financial; Mizuho Financial; Société Générale; Oversea-Chinese Banking Corporation; Standard Chartered (27.9); Credit Suisse (16.04); JP Morgan Chase (110.9); Citigroup (40.8); Lloyds Banking Group (11.6); Barclays (88.75); Goldman Sachs (16.7); Bank of China; Bank of New York Mellon (23.7); Natwest (24.1); Crédit Agricole; Royal Bank of Canada; National Australia Bank; First Abu Dhabi Bank; Santander (24.9); Scotiabank (22.2); SMBC (20.8); Toronto D Bank (23.6); United Overseas bank (16.3)		
Evidence sources	WALHI-Kalbar; Link-AR Borneo; DTE; FPP; EJA; forestandfinance.org		
Current status	Single RSPO case closed in Sept 2020, though the case remains contested. Wider grievances of other PT HSL-affected communities are unresolved.		

Supply chain impacts and grievances: The Manis Mata area in W Kalimantan became the target of industrial logging operations in the 1980s and large-scale oil palm plantations during the 1990s during the Suharto regime.¹¹² PT Harapan Sawit Lestari (PT HSL) commenced land acquisition and land clearance for oil palm plantations in 1993, while a government led KKPA co-operative scheme began in the area in association with PT HSL in 1994. The company's oil palm concessions have affected the customary lands of fifteen Dayak Jelai indigenous communities who have seen their communally held lands, once agro-forestry gardens and forest, taken over by palm oil plantations without adequate FPIC, as only government officials and administrators such as the village (*kades*) and hamlet heads (*kadus*) were informed or asked for consent before land acquisition and forest clearance.¹¹³ At the same time, the KKPA out-grower scheme has long been fraught with problems, including unfair land allocation; corruption; and a lack of transparency over its operations and defective benefit sharing. Harmful impacts on communities include diminished land security, deforestation, damage and pollution of water supplies, forest fires, smog, destruction of orchards, sacred sites, burial grounds, crop pest infestations, impoverished diets (loss of forest foods and game meat), a loss of food security and indebtedness. Affected communities complain that they have been the victims of underhand and corrupt practices to acquire land; and unfair compensation payments, with PT HSL using local government to manipulate and divide communities to make way for plantation expansion. Communities have also raised concerns about air and water pollution from PT HSL's palm fruit processing factory.¹¹⁴

Human rights affected: customary tenure and rights to land and FPIC, rights to food, clean water and a healthy environment, rights to cultural integrity and freedom from discrimination; right to remedy; right to be free from malicious criminalisation and intimidation; right to personal integrity and security; rights to justice and equality before the law.



Despite claims by its Cargill Inc that longstanding land conflicts with indigenous Dayak Jelai communities linked to its subsidiary Harapan Sawit Lestari (PT HSL) are resolved, aggrieved rights holders in several villages complain that no effective remedy has been provided for land loss and FPIC violations. Credit: ESRI, Maxar, Earthstar Geographics

Linkages to downstream companies and financiers: This is a Cargill-owned subsidiary, which also supplies Nestlé (via AAK) and PepsiCo.¹¹⁵ AAK receives palm oil from this mill indirectly via Cargill, GAR and ICOF PTE Ltd. In the case of Unilever, PT HSL was an indirect supplier in 2019, and it remains a supplier in 2021 via Cargill. Cargill Inc is funded by numerous European, Asian, US and UK Banks, including Deutsche Bank, HSBC, Lloyds and Barclays. Information on how specific global finance may or may not flow into Cargill's palm oil business and trading linked to this case in particular and Indonesian palm oil supply chains in general has not been obtained.

Parent NDPE commitments and ESG performance: Cargill has multiple CSR policies, including commitments on human rights, indigenous tenure, FPIC,¹¹⁶ sustainable palm oil production and sourcing,¹¹⁷ high carbon stock forests and zero deforestation.¹¹⁸ It also has a sustainable palm oil roadmap that commits it to ensuring all direct and indirect suppliers comply with its NDPE policies.¹¹⁹ PT HSL was formerly majority-owned by the British Commonwealth Development Corporation (CDC), that has been repeatedly criticised for its low public accountability and failure to apply adequate social standards in its development cooperation and businesses. PT HSL and its 32,000 ha of PO plantations were purchased by Cargill in 2005. PT HSL operations continue to breach both Cargill commitments to respect community tenure and its commitments made as a member of the RSPO, including harmful expansion of PT HSL subsidiary PT Indo Sawit Kekal.¹²⁰ Between 2015-18 palm oil suppliers to Cargill in Indonesia were associated with forest fires affecting more than 100,000 ha. In 2019, Cargill's Indonesian supply chains were connected to 19 palm oil producing groups sanctioned for environmental and social violations.¹²¹ In relation to major private banks funding Cargill, several are members of the Thun Group of responsible banks committed to the implementation of UNGPs. A significant number now have specific public human rights policies. Again, it is often unclear precisely how these financiers implement

their commitments on human rights and environmental due diligence. It is also not possible to determine committed actions these financiers will take when *non-compliance* and harmful impacts are detected in existing business relations and portfolios.¹²²

Accountability and remedy: Affected Dayak communities have struggled for more than two decades to obtain justice for land loss and harmful impacts of PT HSL operations on their customary territory. Early complaints were submitted to local government authorities. These resulted in several official investigations into land tenure violations and possible compensation, but did not yield any positive results. Indigenous farmers turned to peaceful direct action with road blockades and land occupations in the early 2000s, resulting in violent repression by the police and military. Villagers also travelled to the country's capital to submit complaints to the national human rights commission in seeking fair reparations.¹²³ Numerous letters and meetings with the British owner CDC over more than a decade failed to deliver any redress even after a dialogue in the 2003 RSPO Roundtable meeting prior to RSPO's official establishment. On Cargill taking over the business, further meetings were sought with the US owner that has offices on the plantation, without any major positive outcomes. In 2018, one of the affected communities, Asam Besar Village, submitted a formal complaint to the RSPO protesting at loss of customary lands and violation of FPIC by the Cargill subsidiary.¹²⁴ While Cargill has multiple sustainability and responsible palm oil sourcing policies, in court in the US its lawyers (and those of Nestlé) have sought to deny accountability for human rights abuse in its agri-commodity supply chains in a case brought against them by former child slaves under the US Alien Tort Statute.¹²⁵ Cargill and downstream supply chain actors like Unilever claim the case is now resolved by the RSPO Complaints Panel and thus is no longer being directly tracked.¹²⁶



Oil palm plantations of Cargill subsidiary PT Harapan Sawit Lestari in Manismata Subdistrict, 2021
Credit: Andre Illu / WALHI Kalimantan Barat

Current situation: In September 2020, the RSPO CP issued a decision reporting that the Asam Besar village case was 'closed' with the community being 'satisfied' with a settlement with the PT HSL.¹²⁷ For its part Cargill had maintained that PT HSL refuted any violation of FPIC which it claims its subsidiary had "fully documented". This claim was overturned by a special audit conducted by SGS Indonesia in November 2019. Cargill has made no statement about the other numerous communities affected by PT HSL. Despite its public commitments to uphold human rights and respect community tenure,¹²⁸ communities consider Cargill has not addressed historical tenure impacts stemming from the previous owner and financiers (CDC etc). The Dayak communities continue to affirm their rights. They pledge they will not give up their demands until their rights and lands are returned and fair reparations made. At the start of 2021, there are (as yet unconfirmed) reports that the RSPO CP decision to close the complaint is the result of company pressure on the complainant community to drop relations with Link-AR Borneo and accept the offer of smallholder plots plus meagre monthly compensatory payments (50 USD) until land is received. If this is correct, it is a direct violation of RSPO rules and the core principles of FPIC and good faith negotiation. Meanwhile, the formal NGO complainant in the case, Link AR Borneo, reports it has not been contacted by the communities regarding company claims that it no longer has a mandate to engage in the complaint on behalf of the community. **This case brings to light the need to have much more robust public criteria for verification of closures of complaint cases by the RSPO including criteria relating to community satisfaction and resolution of land tenure disputes.** Irrespective, the controversies surrounding this particular RSPO complaint and its contested 'closed' status, local leaders and NGOs point out that PT HSL and Cargill continue to appear largely *unaccountable* to other affected Dayak communities for decades of harm and dispossession caused by their plantation operations.

We, Dayak Keladi indigenous peoples of Manis Mata subdistrict, Ketapang District, are the owners of customary territories in which PT HSL has been operating since 1996, we have suffered a lot of problems caused by oil palm plantation's business use permit (HGU) on our customary territories. As landowners our rights have been appropriated and diminished by the HGU by means of deceit and manipulation, stealing, and intimidation towards community leaders. Therefore, we are demanding that our land and customary territory be returned.

— Hamlet Head of Manis Mata subdistrict, Ketapang District, West Kalimantan, 2020

Community demands on Cargill Inc: Reliance on RSPO alone to resolve grievances is insufficient. As a parent company responsible for subsidiary conduct, Cargill must enable timely remedy to address deficiencies in the original FPIC and ensure the meaningful participation of all the affected Dayak Jalai communities in Manis Mata to ensure redress for past PT HSL harms, including by enabling land restitution where requested.

II.B.5 Salim Group/Indofood Agri Resources Ltd			
Producer supplier	PT Mitra Intisejati Plantation (PT MISP)		
Location	Subah subdistrict, Sambas District and Bengkayang District, West Kalimantan		
Affected rights holders	Dayak Bekati communities of Bengkayang		
Human rights/tenure impacts	Land loss, FPIC violations and livelihood damage associated with deforestation and harmful industrial monocrop production		
Mill/plantation(s)	Bengkayang (UML PO 1000006344)		
Certification	No		
		RSPO Member	Conflict and complaints
Group(s)	Indofood Agri Resources Ltd	No	Yes – since 2007
Parent company	Salim Group	No (withdrew 2019)	
Downstream buyers/traders	Nestlé (via ADM)		
Investors/financiers to Salim Group 2015-20 (million USD)	Examples: Rabobank (129.5); DBS (480.2); SMBC Group (539.6); Mizuho Financial; Bank Mandiri (908.9); Bank Tabungan Negara (109.9); Bank Rakyat Indonesia; Standard Chartered; Mitsubishi UFJ Financial; Bank Central Asia (1511.9); United Overseas Bank; Citigroup; Bank of America; Bank of Philippine Islands; China Banking Corporation; Metropolitan Bank & Trust; HSBC; Malayan Banking; Indo Premier Securities; Trimegah Securities; CTBC Financial Holding; First Financial Holding; Hua Nan Financial; Mega Financial; Fubon Financial; Taiwan Cooperative Financial; BNP Paribas; Commonwealth Bank of Australia; Deutsche Bank (19.8); Brandes Investment Partners; Vanguard (27.2 and US\$20.449 million in shares) ¹²⁹ ; Dimensional Fund Advisors (28.3); BlackRock (20.8)		
Evidence sources	TuK INDONESIA; FPP, Greenpeace, RAN		
Current status	Unresolved and ongoing grievances		

Supply chain impacts and grievances: In March 2007 Indofood Agri Resources, a subsidiary of the Salim Group, acquired a 70% shareholding in PT Mitra Inti Sejati Plantation (PT MISP), which owns plantations and concessions in West Kalimantan over 37,440 ha. Affected Dayak communities denounce irregularities and illegality associated with the original HGU permit providing commercial land rights to PT MISP. Communities complain of widespread deforestation by the company over more than a decade that has resulted in negative impacts on their local livelihood security and way of life. Forest loss totalling more than 17,000 ha inside the company concession is confirmed by land use change studies conducted by the International Centre for Forestry Research (CIFOR).¹³⁰

Human rights affected: Rights to land and tenure security, FPIC, food security, healthy environment, freedom from displacement; freedom of speech; access to justice and right to an effective remedy.

Parent NDPE commitments and ESG performance: The Salim Group and its large subsidiary Indofood Agri have one of the largest landbanks held by any producer, with approximately 250,000 ha of plantations in Indonesia. Indofood Agri Resources has made commitments to protect high carbon stock forests and uphold FPIC,¹³¹ but the Salim Group as a whole does not have an overall policy on human rights, FPIC and HCSA.¹³² Its plantation companies and suppliers have been repeatedly condemned for rights abuse and deforestation, including in relation to PT Duta Rendra Mulya (PT DRM) and PT Sawit Khatulistiwa Lestari (PT SKL) operations in Kalimantan.¹³³ In 2017,

it was estimated that more than 40% of its land bank was contested.¹³⁴ CIFOR reported 33 cases of land clearance associated with Salim Group companies operating in Kalimantan in 2019.¹³⁵ The Group also stands accused of illegal acquisition of community lands in West Papua.¹³⁶ It has also been found guilty of serious violations of workers' rights in Indofood Agri supply chains. These latter breaches of industry standards resulted in the Groups' temporary suspension from the RSPO in 2018. RSPO investigations into the infractions of core labour rights eventually led to the Salim Group's self-imposed exit from the RSPO in 2019, when it publicly refused to accept the findings RSPO audits and decisions of the RSPO complaints panel.¹³⁷



Salim Group subsidiary PT Mitra Intisejati Plantation (PT MISP) is the subject of allegations of illegal land acquisition and human rights abuse against local Dayak customary landowners. Credit: ESRI, Maxar, Earthstar Geographics

Connections to downstream companies and financiers: In 2020, PT MISP provided palm oil to Archer Daniels Midland (ADM) which supplies Nestlé. The plantation and mill had supplied Unilever in 2017, but Unilever dropped Salim Group suppliers in 2018 due to the aforementioned NGO evidence¹³⁸ of labour rights abuses by Salim subsidiary Indofood.¹³⁹ The supplier has also been dropped by AAK. A number of European and US Banks and investment groups are funding the Salim Group, including Deutsche Bank, Rabobank, Citigroup, Bank of America and Blackrock. Some of these Banks and investors, like Deutsche Bank,¹⁴⁰ have human rights policies and industry social and environmental safeguards, like the IFC Performance Standards. Others, like Blackrock may have public commitments on employee rights,¹⁴¹ but do not have zero deforestation policies nor public commitments on the rights of communities affected by its asset management in the palm oil and other agribusiness sectors, even if they do acknowledge problems and risks in the sector in the companies in which they own shares. Blackrock has been severely criticised for voting against environmental and social policy reforms in companies that form part of their asset portfolio.¹⁴² In response to public pressure, in 2020-21 Blackrock started to announce new policies to require its clients to disclose their carbon footprint and human rights impacts, though operational policies and public disclosure of its due diligence frameworks to ensure compliance are still lacking (see also Part III and the Annex to this report).

Accountability and remedy: Up until today the Dayak Bekati' indigenous people in Sabung Sanggau Hamlet of Mukti Raharja Village are demanding that 642 ha of customary land planted and converted to business use permit (HGU) by PT MISP without their prior consent be returned

back to them. Affected customary landowners remain seriously aggrieved that their traditional agroforestry lands (*tembawang*) have been expropriated by oil palms and a government-imposed transmigration programme.¹⁴³ Rather than address formal community complaints made to the local BPN land agency office and legitimate claims for land restitution since 2003, PT MISP and its parent Salim Group have sought HGU over the disputed undistributed smallholdings including the 642 ha in Sabung Sanggau hamlet. In 2017, community notices forbidding fruit harvests on the disputed customary lands were disregarded by PT MISP that proceeded to harvest, obliging the community to collect remaining fruits only to be unjustly denounced to the police by the company for theft. This led to the arrest of customary landowners and community leaders, who were forced to sign agreements to desist from protests and fruit harvesting before being allowed to exit police custody. The case is not logged by ADM¹⁴⁴ nor Nestlé grievance registers. Salim Group and Indofood Agri do not have public grievance logs (cases not found). As in the other cases in this sample, international financiers of agribusiness groups producing and supplying palm oil to global markets continue to be largely unaccountable to affected communities in 2021.



Field verification visit in 2021 involving parties in land dispute with PT MISP, Sambas District, Kalimantan. Credit: Norman Jiwan / TuK INDONESIA

Current situation: The case remains unresolved and affected indigenous communities continue to seek justice for land loss, FPIC abuse and violent repression of their community leaders and land defenders. They also seek reparations for false arrest and detention.

Even since the beginning of the PT MISP operation there was no transparency of information causing community grievances on land distribution, smallholder development and we have never been properly informed; the company's failed obligations show serious legal compliance problems with HGU, conflict and criminalisation, and perceived injustices for affected communities. This has been particularly suffered most for Dayak Bekati' indigenous women and their rights... So it can be concluded that PT MISP has not only appropriated customary rights of Dayak Bekati' indigenous peoples but also cultural identities of Dayak Bekati' indigenous women

— spokesperson, Lembaga Bentang Alam Hijau [LemBAH], 2020

II.B.6 Indonesian State-owned palm oil group PTPN			
Supplier/company	PT Perkebunan Nusantara XIII ¹⁴⁵		
Location	Parindu Subdistrict, Kembayan Subdistrict, Tayan Hulu Subdistrict and Meliau Subdistrict in Sanggau District and Landak District, W Kalimantan		
Affected rights holders	62 Dayak communities (Pang Podan, Kodan, Taba, Mayau, Ribun, Pandu, Dosan) and Melayu		
Human rights/tenure impacts	Land expropriation; violation of FPIC, land conflicts; repression; loss of land and livelihood security, water scarcity		
Mill/plantation(s)	Kebun Gunung Meliau (PO1000004350)		
Certification	No (RSPO)		
		RSPO Member	Conflict and complaints
Group	PT Perkebunan Nusantara	No	Yes, since 1980s
Parent	Indonesian state	No	
Downstream buyers/traders	Nestlé (via AAK); AAK (via Wilmar); Unilever (2019); PepsiCo; Cargill; Wilmar (via PTPN I, II, III, IV, V and VI)		
Investors/financiers to PTPN Group 2015-20 in million USD	Bank Negara Indonesia (150.1), Bank Mandiri (1010.4), Bank Rakyat Indonesia (229.8); SMBC Group (40), Indonesia Eximbank (78.3), Malayan Banking (72.4), Bank of Philippine Islands, Bank Central Asia (54.3), Industrial and Commercial Bank of China (36.2); Hana Financial; Aozora Bank; Bank of East Asia; China Construction Bank (13.8); Chang Hwa Commercial Bank; Prudential (UK); E.SUN Financial; Bahana Group; Bank Riau Kepri; Exim Bank (Tanzania); Mitsubishi UFJ Financial (13.9); QNB Group; DBS (22.5) [note: State transmigration and oil palm development on Dayak customary lands was funded by World Bank in 1980s and 90s. ¹⁴⁶ SMBC (Mitsubishi) group is a key World Bank-IFC partner in trade finance since 2016, though linkage to PO trade is unclear] ¹⁴⁷		
Evidence sources	Sawit watch; FPP; Land Matrix; EJA; academic studies; forestandfinance.org		
Current status	Unresolved land tenure and benefit sharing grievances.		

Supply chain impacts and grievances: PTPN XIII (formerly PTP VII) entered Sanggau area in 1984 and commenced government sponsored large-scale forest clearance for oil palm and rubber plantations using transmigrant labourers without prior agreement nor involvement of the indigenous Dayak population. The massive state-led plantation operation that began in the 1980s did not obtain a legitimate land use change license (HGU) and failed to respect Dayak systems of customary law, tenure and ways of life, which has caused widespread grievances, land conflicts and often violent confrontations.¹⁴⁸ Communities and leaders who questioned the development faced intimidation by the military. Expropriation of customary lands and forests to oil palm development has led to large-scale deforestation, destruction of biodiversity, water scarcity, restricted access to land and livelihood resources, loss of agroforestry systems, declines associated food security and a loss of livelihood autonomy.¹⁴⁹ Parindu Dayaks that did agree to participate in the PTPN small holder plasma schemes complain the company and state have never kept their commitments. Aggrieved communities denounce PTPN XIII and government for deceiving customary landowners and farmers, particularly in relation to promised allocation and titling of land holdings.¹⁵⁰

Human rights affected: Rights to customary land, FPIC, clean water, food security, cultural integrity and right to remedy; rights to equal participation in public life and freedom from intimidation; rights to freedom of association and peaceful demonstration.



Human rights impacts stemming from the operations of state-owned plantation PTPN XIII affecting Dayak communities include, among others, violation of customary tenure, FPIC and denial of livelihood resource rights
Credit: ESRI, Maxar, Earthstar Geographics

Parent NDPE commitments and ESG performance: Overall the PTPN state-owned agribusiness group is reported to control more than 500,000 ha of oil palm plantations and 65 palm fruit processing facilities. The company possesses a code of 'good governance' but has no group-wide specific commitments on forests, tenure and human rights,¹⁵¹ though some of its subsidiaries have bilateral NDPE commitments with Unilever.¹⁵² PTPN III in N Sumatra is an RSPO member and has made public plans to certify all its plantations, including smallholder units, under RSPO.¹⁵³ PTPN XIII is not an RSPO member. It undertakes conventional benefit-sharing activities with smallholders (provision of schools, health clinics etc), but local communities report that services are often unsatisfactory. Different PTPN subsidiary companies have been found to be associated with breaching the current moratorium on forest clearance for oil palm and rights abuse across Indonesia, including in Sumatra,¹⁵⁴ for illegal HGU practices and company involvement in land conflicts in Sumatra,¹⁵⁵ Sulawesi¹⁵⁶ and West Papua.

Linkages to downstream companies and financiers: This mill and other mills and plantations controlled PTPN XIII supply Cargill, Unilever and PepsiCo, and also Nestle (via AAK). AAK obtains its indirect PTPN XIII supplies via Wilmar. Wilmar is also connected through other PTPN suppliers including PTPN I, II, III, IV, V and VI.¹⁵⁷ Unilever also has supply chain connections with PTPN III, IV and 5 (see above). The PTPN Group is financed in large volumes by Indonesian state banks like BNI, Bank Mandiri and Bank BRI. It is also financed by a number of international banks and investors like Eximbank and Prudential (UK).

Accountability and remedy: Protracted land injustices and community grievances with PTPN XIII remain unresolved to date. Affected Dayak communities asserted their rights from the outset, challenging marginalisation by the transmigration programme through national representations to House of Representatives in 1989. After continued protests, the company finally started to apply the partnership model and 'transfer' some of the core plantations to the community through smallholder schemes in the 1990s. The early Pir-Bun (Plasma) approach encountered many problems as the ownership and control of plantations remained with the Rural Unit Cooperatives (KUD) and the company. The farmer ownership KKPA model was later introduced. This resulted in problematic land adjudications and flawed credit schemes. Up until today, Dayak farmers complain that PTPN XIII and the KUD have failed to fulfil their commitments to farmers under the original agreements. Some customary landowners have taken legal actions in the local courts where the HGU of PTPN XIII has been ruled to have violated FPIC and hence be unlawful in each case. However, decisions in favour of community cases have been appealed to the Supreme Court, which ruled in favour of the state entity. Land claimants are disheartened and now doubt if they can get a fair hearing in the national judicial system.

Current situation: In 2021 land disputes and community grievances with PTPN XIII continue and remain unresolved. Communities affected by PTPN XIII continue to call for a review of all the HGU obtained by the company and robust measures to resolve longstanding land disputes.¹⁵⁸ Indigenous communities are rejecting a proposed extension of the business use permit (HGU) of PTPN XIII because the current HGU is legally unfair and overlaps with protected forest areas (*hutan lindung*), community settlements, and burial grounds.¹⁵⁹

II.B.7 PT Mitra Austral Sejahtera (PT MAS)			
Supplier	PT Mitra Austral Sejahtera (PT MAS)		
Location	Bonti subdistrict, Sanggau, W Kalimantan		
Affected rights holders	Dayak Hibun communities of Kerunang Hamlet and Entapang Hamlet		
Human rights impacts	Violations of customary tenure, FPIC, right to land restitution, right to remedy, rights to cultural heritage and cultural integrity		
Mill/plantation(s)	Mitra Austral Sejahtera (UML PO1000004377)		
Certification	No		
		RSPo Member	Conflict and complaints
Group(s)	PT Inti Nusa Sejahtera/ PT Capitol	No	Yes, since at least 1996
Parent company	Not found (Formerly Sime Darby until June 2019)	No	
Downstream buyers	Cargill (via Inti Nusa Sejahtera, AAK, Musim Mas etc); Nestlé (via ADM); Unilever (2019) PepsiCo; AAK (via Cargill)		
Financiers and investors to Sime Darby Group (2015-20)	AIA Group (38.65); Blackrock (61.81); British Columbia Investment Management (1.29); California Public Employees' Retirement System (CalPERS)(2.69); Charles Schwab (4.7); City of London Investment Group (2.06); CPP Investment Board (10.68); Credit Agricole (1.63); Credit Suisse (2.31); Deutsche Bank (1.96); Dimensional Fund Advisors (11.87); Employees Provident Fund (1111.32); Geode Capital Holdings (5.5); GIC (29.1); Government Pension Investment Fund (GPIF)(24.77); HSBC (2.06); JP Morgan Chase (0.93); KWAP Retirement Fund (452.51); Legal & General (2.73); Malayan Banking (202.4); Malaysian Hajj Pilgrims Fund (72.22); Manulife Financial (6.7); Morgan Stanley (0.92); Northern Trust (29.3); Oversea-Chinese Banking Corporation (95.5); Pensioenfondszorg en Welzijn (PFZW)(9.1); Permodalan Nasional Berhad (4572); Pertubuhan Keselamatan Sosial (17.1); Prudential UK (55.3); Principle Financial Group (26.9); Public Bank (177.3); Royal London Group (1.24); Sjuende AP-fonden (AP7)(4.5); Standard Chartered (205.5); Standard Life Aberdeen (0.6); State Street (4.7); Van Eck Global (5.2); Vanguard (133.6).		
Evidence sources	TuK INDONESIA, FPP, Oxfam, WALHI Kalbar, Sawit Watch, forestandfinance.org		
Current status	Unresolved land tenure grievances....		

Supply chain impacts and grievances: This particular mill and plantation have been the cause of land conflict and community grievances since 1996, when PT Mitra Austral Sejahtera (PT MAS) (formerly PT Ponti Makmur Sejahtera) obtained a location permit affecting indigenous Dayak Hibun lands without FPIC. According to Indonesian law a company can only apply to the National Land Agency (BPN) for a business use permit (*Hak Guna Usaha* - HGU) if it produces written releases to show that the land is vacant and free from encumbrances.¹⁶⁰ In this case, PT MAS failed to obtain legitimate written releases over disputed land as legally required, but in 2000 was still able to persuade the land agency to grant it an HGU over some 8,741 hectares.¹⁶¹ This contested HGU will apparently continue until 2030, and covers parts of Kerunang, Entapang and other hamlets.¹⁶² From the outset and up until today (see 'Current Situation' below), the affected communities maintain that they have been deprived of more than 1,400 ha their land by PT MAS and its affiliated operations by deceit. This has had numerous adverse impacts and costs on the communities including, among others, damage to sacred sites, ecological destruction with disproportionate impacts on women who have suffered diminished land rights and harm to their traditional status and livelihoods.¹⁶³ On the ground, the land conflict has led to injuries, threats, harassment and intimidation and criminalising of four farmers seeking land justice.¹⁶⁴



Despite persistent calls from affected Dayak Hibun communities for RSPO member on Sime Darby to retain ownership and control of PT Mitra Austral Sejahtera to assist with the remedy of longstanding land rights grievances, the transnational corporate group sold its PT MAS subsidiary in 2019
Credit: ESRI, Maxar, Earthstar Geographics

Linkages to downstream companies and financiers: Despite being a high profile and well documented case of human rights violations and violation of RSPO standards,¹⁶⁵ PT MAS continues to be a supplier of Cargill, Nestlé, Unilever (2019 mill list) and Wilmar (PT Wilmar Cahaya Kalbar, Pontianak), and also supplies AAK via Cargill.¹⁶⁶ Cargill had the case logged as “under investigation” in July 2019 without details and no updates in 2020.¹⁶⁷ Nestlé did not have the case logged or under investigation at the time of compiling this study, while Wilmar did not have this case registered either. Although named in its 2018 mill list, Unilever claimed in May 2020 via its grievance tracker that PT MAS was now “outside” of its PO supply chain, though its precise status in 2021 is unclear.¹⁶⁸ As noted in the summary table above, numerous EU, US and UK banks, investors, pension funds and asset managers fund former PT MAS owning Group Sime Darby. Very large investments are made in the parent group Sime Darby via Insurance firms like Prudential UK and also volumes of over 1 billion USD via public pension funds like EPF.



Four farmers criminalised and imprisoned in 2008 for peaceful protests seeking return of their customary lands from PT MAS (Sanggau)¹

ESG Performance of group/parent: No environmental and social information has been found on the new owner of PT MAS (PT Inti Nusa Sejahtera). With regard to the former group owner, Sime Darby, the company was linked to over 300 forest fire hotspots in Indonesia in 2019.¹⁶⁹ Sime Darby sent a public communication the same year to Greenpeace demanding its association with PT MAS be removed from its reporting on palm oil linked forest fires.¹⁷⁰ FPP and local partners have also criticised Sime Darby for violation of FPIC and related harmful human rights impacts in its operations in Liberia. In 2020, Sime Darby was also condemned by NGOs for its withdrawal from the High Carbon Stock Approach (HCSA) calling into questions the level of commitment to tackle deforestation in its supply chain.¹⁷¹ Despite general statements on commitments to 'sustainable investment' and ESG values, large international investor groups like Vanguard that fund parent group Sime Darby do not have specific public commitments on human rights and indigenous peoples. The same global financier that provides hundreds of millions of USD in finance to the oil palm sector in Indonesia has no public commitments on forest and climate change.¹⁷²

Accountability and remedy: After no success in gaining any effective company actions to address grievances with PT MAS in repeated meetings with Sime Darby at the annual assemblies of the RSPO from 2005, the communities and Sawit Watch filed a formal complaint to the RSPO in 2012. This complaint outlines the violations of RSPO principles 2 and 6 and rejects Sime Darby's assertions that FPIC had been documented by PT MAS (written evidence of the agreements have never been shared and the land agency claims they are confidential). This complaint remains unresolved and still "under investigation", **eight years** after the original grievance was lodged.¹⁷³ Given the long delays in RSPO Complaints Panel deliberations, in 2018 the communities and TuK INDONESIA presented a formal complaint to the OECD against the RSPO.¹⁷⁴ This complaint (though not formally admitted on a technicality), resulted in an OECD mediated dialogue between TUK and the RSPO CP, which concluded in a legal review and assessment of judicial and non-judicial options for land restitution and reparations. During this process, Sime Darby, in blatant

¹ <https://spkskalbar.blogspot.com/2007/10/kronologis-penculikan-anggota-spks.html>

disregard of a relevant resolution of the RSPO, sold PT MAS to PT Inti Nusa Sejahtera in 2019, despite strong objections and pleas from the communities for Sime Darby to remain engaged.¹⁷⁵ Disillusion with Sime Darby's actions and denouncements of its conduct have been widespread.¹⁷⁶ At the same time, the RSPO had even denied the right of the affected communities to submit statements to the panel in 2020 reaffirming evidence of lack of FPIC and formally responding to gaps in the legal review done for the RSPO. In sum, despite the harm caused by PT MAS rooted in its bad faith land acquisition and ongoing harmful plantation operations, there has been impunity and lack of redress for communities.

Current situation: The communities continue to insist that Sime Darby (an RSPO member) honour its commitments to assist in resolving the case, including providing funds to the Indonesian land agency to compensate PT MAS for restitution of the disputed land back to the Dayak communities, or cover their legal costs to seek land restitution through the courts.¹⁷⁷ The communities continue to urge the RSPO Complaints Panel to issue a progressive and helpful decision, reiterating the responsibilities of Sime Darby in this case through concrete support to the community grievance as described. The RSPO CP decision remained pending in April 2021. PT INS allegedly sold its majority shares in PT MAS to PT CAPITOL at the end of 2020¹⁷⁸ due to difficulty in getting bank funds for financing proper acquisition, consolidation and operations.¹⁷⁹

We still want our customary land back and proper remedy. PT MAS converted 1,462 hectares of customary land in Kerunang Hamlet and Entapang Hamlet to a business use permit (HGU) without a proper FPIC process – this was deceitful behaviour. We don't want to lose our customary land...

— Community leader, Entapang Hamlet, Bonti Subdistrict, West Kalimantan, 2020

II.B.8 Astra International Group/Jardine Matheson			
Producer/supplier	Agro Nusa Abadi (PT ANA)		
Location	Petasia Timur subdistrict, N Morowali, C Sulawesi		
Affected rights holders	Migrant settlers and farmers, including residents of Polanto Jaya Village and Molino Village		
Human rights/tenure impacts	Violence, intimidation and criminalisation of HRDs; land expropriation, displacement		
Mill/plantation(s)	Agro Nusa Abadi [UML: PO1000004093]		
Certification	No		
		RSPO Member	Conflict and complaints
Group(s)	Astra Agro Lestari (AALI)	No	Yes, since 2006
Parent	Astra International Group/Jardine Matheson		
Downstream buyers/traders	Nestlé (via AAK); PepsiCo; Wilmar; Unilever (2019); AAK (via Wilmar)		
Investors/financiers	Bank Mandiri; Bank Central Asia; Bank Pan Indonesia; Florida State Board of Administration (5.6); GPIF (14.2); Invesco (10.4); Oversea-Chinese Banking Corporation; Mizuho Financial (303); United Overseas Bank; SMBC Group (223.3); Bank of China; Mitsubishi UFJ Financial; DBS (18.6); 199. New York State Common Retirement Fund (2.1); HSBC (14.9); ANZ; Citigroup (8.6); JPMorgan Chase; Corsair Capital Management; Commonwealth Bank of Australia; Capital Group (19.8); Schroders (33.3); BlackRock (43.4); Macquarie Group (7.6); California State Teachers' Retirement System (CalSTRS); Government Pension Fund Global ¹⁸⁰ ; Vanguard (42.2)		
Evidence sources	Circle of palm oil complainants; TUK; WALHI, Sawit Watch; FPP, Greenpeace		
Current status	Unresolved adverse rights impacts and longstanding community grievances.		

Supply chain impacts and grievances: PT ANA is condemned by local communities for encroaching on their legitimate lands as long ago as 1994 in Petasia Timur, Morowali Utara District. The company is denounced for mobilising state military forces to suppress farmer protests. Farmers of Molino Village accuse the company of violently grabbing 996 Ha of land in 2006-07 using illegal and fraudulent 'location' (acquisition) permits. The company is also blamed for militarising its concessions in order to intimidate and repress communities.¹⁸¹ PT ANA has regularly taken legal actions seeking to criminalise villagers by accusing them of theft of company palm fruits, when farmers assert the fruits are grown on their own lands invaded by the company. These disputes have led to the criminalisation of land defenders, multiple land conflicts, public protests and repression by the police and military.¹⁸² In addition to gross human rights abuse and land grabbing, the company is linked to damage to wetlands and water pollution, deforestation, corruption and bribery. Aggrieved villagers maintain that the company operates in a corrupt nexus with local government, the judicial system, police, military, and regulatory bodies to suppress communities and squash dissent.

Human rights affected: Rights to land and FPIC; rights to means of subsistence, freedom from involuntary displacement, freedom of association, freedom of speech and the right to remedy.



Community-company disputes over lands occupied by PT ANA plantations have led to the criminalisation of land defenders, multiple land conflicts, public protests and repression by the police and military
Credit: TuK INDONESIA

Group NDPE commitments and ESG performance: The AALI Group is one of the largest palm oil producers in Sulawesi Island. It has a polished “Sustainability” policy and extensive NDPE commitments though it is not an RSPO member as already noted (see also case #2).¹⁸³ Like other large Indonesian oil palm plantation and palm oil processing groups, AALI policies do not match its practices that are widely documented as harmful to people, forests and the environment. Astra Agro Lestari Group in different parts of Sulawesi exhibits a systemic pattern of disputed land acquisition and monopoly over land control through the militarisation of their plantation areas. In addition to the PT ANA case, various other AALI subsidiary operations are identified amongst the most aggressive in land acquisition and forest clearance. This has led to confrontations with local communities and indigenous peoples in Sulawesi, and community resistance and resentment. AALI companies are alleged to have grabbed the lands of indigenous Kaili Tado people in Mbulava Village and for contracting armed police (Brimob) units to enable the company to forcefully acquire community lands in the villages of Taviora, Minti Makmur, Tinuaka and Rio Mukti, in Donggala regency.¹⁸⁴ In Minti Makmur, community members tried to defend themselves by seizing the Brimob’s guns, three villagers were jailed for four months for having protected their community. Furthermore, the head of the village disappeared and there is speculation that this was a forced kidnapping.

Linkages to downstream companies and investors: The mill and Group supplies Nestlé (via AAK), PepsiCo and also Wilmar’s PT Multi Nabati Sulawesi, in Bitung.¹⁸⁵ AAK receives its supplies via Wilmar. The mill was included in Unilever’s 2019 mill list. Unilever acknowledges in its 2020 grievance trackers that it “may be exposed” to AALI Group suppliers via its Tier 1 palm oil providers. Cargill sources from the AALI group including several mills in Central Sulawesi. Other than brief indirect treatment of AALI by Unilever, the specific case and AALI Group were not registered in the grievance logs of any of the above downstream companies when investigated during this study in 2020 and the start of 2021.

Major investors in AALI, including Blackrock, do not have coherent social and environmental policies, even if they have made pronouncements important recent on environmental and human rights concerns.¹⁸⁶ Others, like Macquarie Group, investing in the AALI parent company Jardine Matheson have policies and public statements on 'risk management' procedures to address "human rights related issues", but this review has not located information on how such frameworks operate. The same Australian investment group has no specific policies on NDPE.¹⁸⁷ This study has not located a single grievance log among investors or financiers that addresses this case, AALI or any other clients subject to community grievances. This case illustrates that, like the ESG systems of food, fibre, drink and agribusiness companies, investors' ESG systems are not adequate to detect and account for land conflicts and tenure injustice in their business operations, partnerships, supply chains and investments. First, such rating systems rely primarily on self-reporting to questionnaires without verification. Second, FPP finds that many oil palm conglomerates and palm oil processors in Indonesia and elsewhere do not respond to such ESG questionnaires that are voluntary. Despite these major due diligence shortcomings and information gaps among financiers, global palm oil operators are still able to raise massive funding on international money markets.

Accountability and remedy: None to date acceptable to aggrieved communities. Affected communities have led a continuous struggle to reclaim their rights and obtain land restitution from PT ANA, including via public protests and high-level meetings with the District Head of Morowali Utara, the local office of the national land agency, the Central Sulawesi Ombudsman and different government ministries. These actions have resulted in stop work orders and dispute settlement initiatives, but PT ANA has continued to take legal actions against farmers harvesting fruit and using resources on their own land (encroached upon by the company).¹⁸⁸ **There appears to be limited or no accountability at all of downstream companies and investors to aggrieved and dispossessed communities in this case.**

Current situation: The land loss (non-restitution) and militarisation of community lands continues up until today. Communities and land justice movements call on the state to ensure a full review of all HGU and legal permits held by PT ANA and other AALI subsidiaries, in order to ensure land restitution under the agrarian reform.

The commitment of our President [Mr. Joko Widodo] to undertake agrarian reform comes at the right time to conduct reviews on the operations of PT ANA, PT KLS and PT HIP with regards to land conflicts with communities. The review can be initiated by determining which land areas should be objects of agrarian reform and thus returned to the communities as the rightful owners. This should also require a legal review of these three oil palm plantation companies and if any irregularities and violations in the issuance of the permits are found then actual law enforcement should be upheld"

— Edisutrisno, TuK INDONESIA, 2020

II.B.9 Murad Family/ PT KLS			
Supplier	PT Kurnia Luwuk Sejati PT KLS		
Location	Toili Subdistrict, Banggai Regency, C. Sulawesi		
Affected rights holders	Transmigrant families and residents of Toili, Singkoyo and Piondo villages, among others		
Human rights/tenure impacts	Land expropriation; loss of community access rights; involuntary displacement; forced evictions, damage to food crops and orchards; destruction of burial grounds; intimidation, threats and criminalisation of farmers and land defenders		
Mill/plantation(s)	Toili [UML: PO1000004106]		
Certification	No		
		RSPo Member	Conflict and complaints
Group	PT Kurnia Luwuk Sejati - PT KLS	No	Yes, going back to 1996
Parent company	Murad family	-	
Downstream buyers/traders	Nestlé (via ADM); PepsiCo; Cargill (via ADM); Wilmar, AAK (via Cargill) and Unilever (2019)		
Investors/financiers	No information found		
Evidence sources	WALHI C Sulawesi; Front Rakyat Advokasi Sawit (FRAS); TuK INDONESIA; EJA		
Current status	Land conflicts and land restitution claims unresolved		

Supply chain impacts and grievances: Residents of Toili and Singkoyo Villages have long protested that more than 1,500 Ha of community land has been encroached illegally by PT KLS since 1996. Residents of Piondo protest that their traditional rights of way to reach their farming grounds have been destroyed by the company's plantation operations. Villagers and farmers protesting land loss have suffered intimidation, repression and forced evictions by the company, enabled by police. Criminalisation of local protesters led to dozens of farmers being imprisoned.¹⁸⁹ The ongoing conflicts and protracted disputes, led the University of Tadulako Fras to conduct a land survey in 2009, which confirmed that 1,550 ha of PT KLS's HGU illegally overlapped with community lands that had been legally protected from PO development in 1997. PT KLS is accused of severe violations of FPIC and cynical PR and propaganda campaigns to persuade people to give up their lands to PO in return for compensation. Those that resisted initially faced threats from the company. From 2008, physical attacks and forced evictions of communities began in Toili sub-district.¹⁹⁰ The repression by PT KLS has allegedly been backed by the Indonesian military. In 2020, communities and human rights defenders continued to live in a climate of fear and intimidation if they dared speak out against company land grabs and human rights abuse.¹⁹¹

Human rights affected: Rights to land and FPIC; right to freedom from forced eviction; rights to physical security, food security, fair trial and equality before the law and; rights to freedom of association and peaceful public protest.



In 2021, local farming communities impacted by PT Kurnia Luwuk Sejati (PT KLS) in Toili Subdistrict, Banggai District, Central Sulawesi, continue to face repression and intimidation if they speak out against this plantation company
Credit: ESRI, Maxar, Earthstar Geographics

Parent NDPE commitments and ESG performance: Evidence of PT KLS's CSR commitments is not available. The company and its subsidiary PT BHP are large plantation and mill owners whose land holdings amount to at least 20,000 ha, a significant proportion of which have been accumulated through questionable processes that began in the area in 1995, including through alleged company corruption of local village officials.¹⁹² Numerous transmigrant communities complain that PT KLS promised to assist them to obtain land titles and security in return for agreements to plant different crops, but later claimed that the land belonged to the company, while land titles have never been provided.¹⁹³ Some reports indicate disputed lands were obtained without an HGU, via flawed HGU and/or with no environmental assessments over areas totalling many thousands of hectares now illegally acquired by PT KLS, including lands of the villages of Piondo, Bukit Jaya and Bumit Harapan.¹⁹⁴ The Group now holds plantations in Toili, West Toili, E Luwuk, Batui, Moilong and M Bungku subdistricts where it is enmeshed in numerous long-standing agrarian conflicts and land disputes, and has sought to criminalise farmers for challenging land expropriation and refusing eviction, including in Moilong District where farmers have been taken to court by the company.¹⁹⁵



Local farmers of Toili
Subdistrict, Central Sulawesi
demonstrate against the
harmful operations of PT
Kurnia Luwuk Sejati (PT KLS)
Credit: Front Rakyat Anti
Sawit – FRAS

Linkages to downstream companies: While traceability to the mill is not possible on several mill lists,¹⁹⁶ the PT KLS group is a supplier to Pepsi-Co and Nestlé (via ADM). The Toili mill and PT KLS group supply palm oil to Wilmar's PT Multi Nabati Sulawesi (Bitung) mill/refinery, which is RSPO certified.¹⁹⁷ AAK receives PT KLS palm oil indirectly via Cargill. The most recent information available confirms that the mill and group indirectly supplied Unilever in 2019 through the direct (Tier 1) suppliers.

Accountability and remedy: Sustained efforts to challenge PT KLS's takeover of community lands resulted in land occupations, conflict and repression that led to submissions to the National Human Rights Commission in 2009, that in turn resulted into local meetings with the provincial and district authorities resulting in a stop work order. Despite official rulings calling on the company to cease work on disputes lands, PT KLS has continued to operate with impunity. Farming communities and human rights defenders continue to assert demands for land justice and accountability of PT KLS and its business partners.

Current situation: The majority of land disputes and agrarian conflicts caused by PT KLS remain unresolved, including in Toili subdistrict. Land local land claimants still suffer harassment and criminalisation in 2020/21, without land justice.¹⁹⁸

"I will not give up fighting so that our rights can be fulfilled"

– C Sulawesi peasant farmer and female land defender, challenging PT KLS, 2020



Local farmer and woman human rights and land defender in Luwuk District Court, Banggai, in 2020. The court sentenced her to one month in prison for seeking to remove PT KLS worker encampments on her land. PT KLS has brought several legal actions to criminalise woman farmers and land defenders for denouncing land loss, damage to livelihood resources and intimidation by company employees. In 2021 community disputes with PT KLS are ongoing and local farmers remain defiant. The rights holder affirms 'I will continue to struggle because it is my right'

Credit: WALHI Sulawesi Tengah

II.B.10 Cipta Cakra Murdaya (CCM) Group			
Supplier	PT Hardaya Inti Plantation (PT HIP)		
Location	Buol District, Central Sulawesi		
Affected rights holders	Buol farmers, six indigenous settlements and transmigrant settlers		
Human rights/tenure impacts	FPIC violations, loss of customary lands, labour abuses, large-scale environmental damage; repression and intimidation by the police and military		
Mill/plantation(s)	Leok/Toili Toili [UML: PO1000006348]		
Certification	No		
		RSPo Member	Conflict and complaints
Group	PT Cipta Cakra Murdaya (CCM)	No	Yes – since 1993
Parent company	Murdaya family	No	
Downstream buyers/traders	PepsiCo; Wilmar, Cargill (via ADM), AAK (via Wilmar) and Unilever (2019))		
Investors/financiers	No information obtained		
Evidence sources	Buol Farmers Forum; WALHI, TUK; EJA; Earthsight; Palm Oil Consumer Action; GRAIN, WRM, FPP		
Current status	Land conflict and community claims for land restitution and reparations unresolved		

Supply chain impacts and grievances: Farming communities in Buol District have raised grievances about unauthorised roadbuilding and extensive land clearance for the development of a large 22,000 ha palm oil plantation in their area for more than two decades. Early community protests and peaceful actions to protect lands and forest were met with police and military repression.¹⁹⁹ Numerous complaints relate to illegal land acquisition and harmful operations conducted by PT HIP (including plantations alongside rivers and creeks in violation of environmental laws). The company began expropriating community customary lands during Suharto's regime. Communities complain that their traditional farmlands and forests in Buol were expropriated by the company with assistance from military and police forces beginning in the mid-1990s.²⁰⁰ Negative social and environmental impacts included a loss of land and livelihood security, involuntary economic displacement, deforestation, increased flooding, sedimentation of rivers, water pollution, loss of biodiversity and destruction of orchards, farm fields and wildlife habitats.²⁰¹ PT HIP has been found guilty in court of bribery and illegal land transactions in 2012 in securing a land use permit over more than 4,000 ha in Buol, yet the company retains control of the disputed land.²⁰² In 2013 further community protests against company abuses and unresolved land losses resulted in further repression by the police. This was followed by company promises to hold land dispute settlements talks but these have not delivered meaningful outcomes. In 2018, PT HIP and the CCM Group were found to violate national and local (district) land use, environmental and forest regulations (see below).

Human rights affected: Rights to land, FPIC, food security, freedom from forced eviction and involuntary displacement (physical and/or economic); right to a healthy environment and right to remedy (including land restitution).



PT HIP retains control over disputed community lands in Buol District, even though Indonesian courts have found the company and CCM group guilty of bribery and illegal transactions relating to contested lands
Credit: ESRI, Maxar, Earthstar Geographics

Parent NDPE commitments and ESG performance: This review has not identified any CSR commitments of PT HIP nor its parent company CCM. The parent business is owned by the Murdaya family, whose subsidiary oil palm companies reportedly manage at least 145,000 ha of concessions in Papua, North Kalimantan and Central Sulawesi provinces. In addition to proven crimes of corruption, multiple allegations of land grabbing and intimidation of communities noted above, NGOs point to evidence of deforestation in PT HIP concessions in Sulawesi, Kalimantan and W Papua, including 434 ha of forest loss between 2014 and 2018 in its Sulawesi plantation.²⁰³

Linkages to downstream companies: All three Hardaya Inti mills in Sulawesi and Kalimantan, including Leok, are reported in PepsiCo's 2019 mill list. PT HIP supplies Cargill via ADM. PT Hardaya Inti was a named supplier in Unilever's 2019 mill list. Unilever's grievance log suggests its supply chain is still connected with PT HIP via Musim Mas (see below). The Toili Toili (aka Leok) mill additionally supplies Wilmar (PT Multi Nabati Sulawesi, Bitung). AAK receives PT HIP palm oil indirectly via Wilmar. PT HIP reports supplying several Indonesian groups and processing

companies, including the Salim Group, PT Megasurya Mas (RSPO member), PT Bimoli, PT Hasil Abadi Perdana (RSPO member), PT Karya Prajona Nelayan,²⁰⁴ and Musim Mas Group, although this review has not been able to verify if these suppliers provide PO to major transnational downstream companies (on the Salim Group, see case #5 above). Nestlé does not source from PT HIP's Leok operation in Sulawesi, but receives PO from the Hardaya Inti group, via its mill in N. Kalimantan.

Accountability and remedy: Affected communities and Buol farmers have made numerous protests and submitted formal complaints against PT HIP to the national human rights commission with solid evidence of forced expropriation and encroachment over 4,478 Ha dating back to 1993. Despite company protestations that its land holding is legal, community evidence demonstrates the illegality of land occupation. In addition to community actions, in 2017 local environmental authorities denounced the company for holding illegal forest conversion permits linked to the aforementioned bribery case already noted.²⁰⁵ The company is also denounced by the local Bupati and civil society for breaking land acquisition rules (exceeding the 20,000 ha limit per district), contravening district-level forest protection plans and violating the national moratorium on new forest conversion for oil palm development issues by the President of Indonesia in September 2018.²⁰⁶ The same year, the Corruption Eradication Commission (KPK) ruled that the disputed deforestation permits are indeed illegal and contrary to Indonesian's moratorium on forest clearance for oil palm, and consequently called on the Environment Ministry to annul the permit.²⁰⁷

With regards to downstream companies and traders, there is likewise no apparent accountability to affected rights holders. The PT HIP case is noted in the Wilmar grievance log in relation to more than 400 ha of deforestation reported by Greenpeace,²⁰⁸ but was recorded as 'closed' in 2018 as Wilmar claims it had 'engaged' PT HIP/HPG and it had "committed to a moratorium on land clearing." The case was also logged by Unilever based on the same GP report. In 2019 Unilever advised that it has talked to its direct supplier Musim Mas which has in turn talked to PT HIP on "... HCS and HCV assessment, assess legal compliance and establish an internal Standard Operating Procedure (SOP) on sustainability and NDPE commitments." There is no update on Unilever complaints log on whether the PT Cipta Cakra Murdaya PT HIP matter is resolved; nor is there any mention at all anywhere of longstanding community grievances regarding FPIC violations and land theft despite extensive documentation of the PT HIP's harmful impacts since the 1990s.²⁰⁹ The case is noted in ADM's 2018 grievance register without any details on the securing of a resolution or lack thereof, other than referring the reader to Wilmar's aforementioned truncated 'closed' report on the case.²¹⁰

Current situation: Despite legal convictions for irregular land acquisition, PT HIP still retains the disputed land and agrarian conflicts continue. No Buol farmers have yet received reparations or land restitution.

"PT HIP is not only environmentally problematic but also causing social conflicts with farmers and workers. During this Covid-19 pandemic state of crisis and economic recovery, PT HIP must fulfil workers' rights and return the ongoing disputed lands back to the communities"

— Edisutrisno, Executive Director of TuK INDONESIA 2020

Part III.

Conclusions, findings and proposals for action



In addition to land grabbing and deforestation, palm oil mills in Indonesia and in other producer countries are often denounced for air and water pollution adversely affecting the health and water rights of adjacent communities
Credit: Rhett A Butler / Mongabay

The cases in Section II detailing negative human rights and environmental impacts in the palm oil supply chains and operations of upstream and downstream actors generate evidence of continuing **systemic problems** in global palm oil business and investments connected with the world's largest producer of this commodity and its derivatives. This section summarises some core findings; and sets out demands of communities and civil society organisations in each case. The case evidence and wider critical review in this study also yield general and specific lessons and recommendations on measures needed to strengthen corporate governance and accountability and improve supply chain due diligence. Recommendations are targeted at downstream companies, the finance sector, policy makers and legislators developing demand side measures on corporate conduct and supply chain regulation. Proposals are also made for governance and policy reforms in producing countries. Recommendations on liability and corporate accountability are also made at the end of this section.

Core findings

III. A. Supply chain contamination

Global palm oil supply chains connected to Indonesian suppliers are often contaminated by **human rights abuse and environmental harms originating upstream** (See Table A). Social and ecological damages embodied in the PO commodity and derivatives include:

- **Unresolved current and historical human rights abuse**, including violations of indigenous peoples' rights, land expropriation and injustices in breach of international human rights law and corporate NDPE commitments and industry standards (e.g. all cases #1 through #10)
- **Land expropriation and violation of customary and community tenure** and resource rights: all cases #1 through #10
- **Violent land conflicts** leading to physical attacks, injuries and repression (e.g. Cases #2,3,6,7,8,9,10), including killings of community members and human rights defenders (e.g. Case #1)²¹¹
- **Involuntary displacement** of indigenous peoples and loss of access to subsistence and cultural resources, causing diminished food security (e.g. Cases #1,2,3,4,6,9,10)
- **Violations of the right to free, prior and informed consent**: all cases #1 through #10
- **Intimidation and criminalisation** of community leaders, customary landowners and human rights defenders who challenge oil palm plantation companies and denounce abuse (repression is committed by plantation companies and their security services, frequently in association with the police and military and sometimes with backing of local judicial system) (cases #2,3,6,7,8,9,10);
- **Violations of the right to freedom of association**, peaceful protest and equality before the law (e.g. Cases #1,3,6,7,8,9,10)
- Deforestation and forest fires (e.g. cases #2,3,4,5,7,10)
- **Damage to community orchards, farm fields, fallows, hunting grounds and wildlife habitats**: all cases #1 through #10
- **Desecration of burial grounds** and cultural heritage sites (e.g. cases 2,4,6,7,9)
- **Pollution of surface and groundwater resources** and fisheries (e.g. cases # 1,3,4,8)
- **Loss of access to potable water** and damage to wetlands (e.g. cases #2,3,4,6,8)
- **Air pollution** from mills and processing facilities (e.g. case #4)
- **Violations of the right to food security, clean water, a healthy environment, cultural heritage and cultural integrity** (e.g. cases #1,2,3,4,6,7,8,9)
- **Unresolved community grievances**: all cases #1 through #10
- **Denial of the right to remedy** and access to justice: all cases #1 through #10

Table A: 10 Indonesian palm oil suppliers and parent groups: summary of supply chain impacts and grievances

Case	Supplier	Group/parent	Downstream buyers	UK/EU/US investments + finance to groups	Violence/repression/HRD	Land conflict	Violations of IP rights/land tenure rights	Abuse of FPIC	Deforestation/environmental damages	Grievances	Remedy	Accountability to affected rights holders?
1	PT PSA	First Resources	a,b,e,f	Yes						Outstanding	None	
2	PT SAL1	AAL/Jardines M	a,b,d,e,f	Yes						Outstanding	None	
3	PT KDA	PT SMART/GAR	a,b,c,d,e,f	Yes						Outstanding	None	
4	PT HSL	Cargill	a,c,d,f	Yes						Contested	Contested	*
5	PT MISIP	Salim Group	a (via ADM)	Yes						Outstanding	None	*
6	PTPN XIII	Govt of Indonesia	a,b,d,e,f	Yes						Outstanding	None	*
7	PT MAS	PT INS/PT Capitol*	a,b,d,e,f	Yes						Outstanding	None	**
8	PT ANA	AAL/Jardines M	a,b,d,f	Yes						Outstanding	None	
9	PT KLS	Murad family	a,b,c,d,e,f	Yes						Outstanding	None	
10	PT HIP	PT CCM/Murdaya	a,b,e,f	Yes						Outstanding	None	

a = Nestlé, b = Cargill, c = Unilever, d = Pepsico, e = Wilmar, f= AAK. Note: It is only possible to determine Unilever supply chain suppliers to 2019 as they have not published updated lists of third party suppliers and mills since then.

*Only 1 village has reportedly reached an agreement with PT HSL and this RSPO complaint case remains contested in 2021 (see case study II.B.4 in Part II), while many affected indigenous settlements and landowners adversely impacted suffer unresolved grievances in 2020/21

**Formerly Sime Darby until 2019 that divested PT MAS that year.

Root causes of harm: Many of the abuses above are associated with the prevalence of land disputes, conflicts and community grievances linked to palm oil production in the producer country. Land and water conflicts are rooted in the failure of the state *and* corporate actors to ensure good faith FPIC processes prior to land acquisition and/or out-grower agreements. Large areas of customary land in Indonesia have been converted to *Hak Guna Usaha* (HGU) commercial land permits without genuine FPIC and with no proper legal contract with affected indigenous communities. Corruption and weak governance are a further underlying driver of rights violations and conflict, as palm oil supply chains are associated with unjust and corrupt state land allocation to oil palm plantation and processing companies. In turn, the cause of grave human rights abuse in the form of attacks and repression of leaders and community members is tied to underlying land disputes. Indonesian oil palm grower companies are quick to denounce communities to the police for harvesting palm fruits on disputed land, leading to false arrests, arbitrary detention and criminalisation of customary landowners and local farmers defending their lands, livelihoods, and human rights.

III. B. Supply chain actors, defective due diligence and accountability gaps

Systemic supply chain problems: Case study evidence confirms that the above rights abuses and harmful environmental impacts are embedded in supply chains connected with major downstream palm oil traders, processors and food and beverage manufacturing companies. Downstream actors involved in these supply chains include Cargill, Nestlé, PepsiCo, Unilever, Wilmar International, AAK and Archer Daniels Midland, among others (SEE Figure Y1). With regard to other actors, a range of studies conducted shows that, despite numerous commitments and pledges on sustainable sourcing, other transnational downstream businesses such as Bunge,²¹² Colgate Palmolive,²¹³ Mars,²¹⁴ Procter and Gamble²¹⁵ and Mondelez²¹⁶ are likewise dealing with and benefitting from unsustainable palm oil from Indonesia. All this evidence indicates ongoing *systemic and sector-wide* palm oil supply chain problems in Indonesia and globally.

Involvement of international financial businesses: Case study analysis additionally shows that European, UK, US, Canadian, Japanese, Australian banks, investors and financiers are funding major Indonesian corporate groups and their subsidiaries like Astro Agri Lestari (AALI) involved in palm oil production, processing and trade, whose plantations are associated with serious human rights abuse, land conflicts, deforestation and environmental damage. This evidence indicates that current human rights and environmental due diligence commitments, methods and practices in the global finance industry are not fit for purpose and require major upgrading.

Defective human rights due diligence, weak verification and non-disclosure: Evidence and analysis in this study show that while a growing number of downstream companies and some upstream agribusiness corporate groups have public commitments and policy statements on human rights in line with UN Guiding Principle 15(a), and while some now publish sustainability sourcing initiatives and data (e.g. on traceability and certified volumes), other UNGP principles and reporting requirements are not being fully met.²¹⁷ Even where palm oil producers, traders and food and beverage companies have human rights policies, sustainable sourcing statements and NDPE commitments, many still **lack operational procedures** to ensure their practical application, for example in relation to customary land rights and FPIC (Annex I). Like other studies, this review has found companies like Cargill are **failing to disclose** their operational policies and operating procedures on human rights impact assessment, land tenure governance and FPIC.²¹⁸ In addition, fulfilment of business responsibilities to put in place effective due diligence systems and *publicly disclose* and account for actions to *address* harmful impacts and risks is partial and weak (See Part II and Annex I).

Corporate due diligence, disclosure and public accountability gaps detected in this analysis include the failure of businesses to disclose adequate information on their *due diligence systems* and *actions* taken to identify and *address* adverse impacts on human rights. Such information is still often limited, generalised, confined to a limited number of 'salient' issues, or it is missing entirely in the public reports of downstream refinery, trader, purchasing and manufacturing companies, including RSPO members and Consumer Goods Forum member companies with NPDE commitments, such as Nestlé, Cargill, PepsiCo; Unilever, Wilmar, among others. While downstream supply chain actors are rightly disclosing their palm oil suppliers in Indonesia and globally, they are failing to properly detect and report on (or may possibly be disregarding), prior and existing cases of human rights abuse connected with corporate group and indirect suppliers whose mills and plantations are associated with land conflicts and violations against indigenous peoples, rural communities and human rights defenders.

It is not uncommon for some companies to make reference to their 'due diligence' systems in their public information, but there is rarely much detail provided on the content, methods and verification practices applied nor company commitments and protocols to address detected adverse impacts and non-compliance.²¹⁹ Another core finding is that downstream and midstream supply chain businesses appear to apply a flawed approach to the definition of community 'grievances' limited to formal complaints only: this narrow focus is **failing to identify numerous outstanding community concerns and grievances, which should be picked up and addressed through due diligence**, thus overlooking unresolved human rights abuse cases in their operations and palm oil supply chains.

The review of the cases in Part II also indicates that reliance on existing ESG ratings for corporate groups or making assessments of palm oil companies using current NDPE score card platforms are not sufficient methods to assess company social and environmental performance nor verify compliance with applicable standards. While these platforms may provide useful information on CSR policies, downstream companies, financiers and investors should be careful not to give undue weight to such data in their supply chain and portfolio due diligence (see recommendations in III.C.3 below). Likewise, while palm producer groups like First Resources and Wilmar International may publish sophisticated sustainability reports that may disclose useful information on policies and initiatives, these sources are not adequate to assess the sustainability of their supply chains and the operations, due to similar problems with self-reporting bias found in many ESG information sources.²²⁰

This study additionally finds that existing industry audit and commodity certification practices continue to suffer significant shortcomings in terms of their reliability and credibility. In line with numerous other studies (see sources in Annex I), case study evidence in Part II, for example, shows that RSPO certification audits and sustainability surveillance assessments are still **failing** to register or are downplaying land disputes and conflicts affecting indigenous peoples and farming communities (e.g. Jelatang mill belonging to GAR-Sinar Mas-PT Smart; First Resources subsidiary PT PSA land conflicts with customary landowners in Riau). As reported by FPP and others elsewhere,²²¹ social audit failings are rooted in insufficient auditor capacity on human rights and land tenure matters as well as conflict of interest bias and perverse incentives to minimise or overlook non-compliance.

Accountability deficit and lack of effective remedy: This study finds that downstream and upstream supply chain actors dealing in and supplying Indonesian palm oil have weak or zero accountability to affected communities for current and past land conflicts and human rights abuse. Adversely affected communities must currently endure human rights abuses with no effective remedy for years or even decades. Judicial sanctions and law enforcement mechanisms are often ineffective in Indonesia and other producer countries. This analysis finds that oil palm plantation companies who are the subject of court rulings to halt operations on disputed community lands are able to disregard such orders with impunity (e.g. PTPN XIII affecting Dayak customary lands in W Kalimantan). Existing non-judicial palm oil industry accountability mechanisms such as the RSPO complaints system remain typically slow and ineffective. These grievance mechanisms are not always perceived as safe and accessible by rightsholders and defenders: such mechanisms are still failing to deliver effective remedy for affected communities

(e.g. Community and TUK RSPO complaint against PTMAS (Sanggau) - still languishing 'under investigation' after more than 8 years). Powerful palm oil conglomerates are still permitted to wash their hands of responsibility to remedy community grievances by divesting 'problematic' subsidiaries, even during ongoing formal complaints (e.g. Sime Darby's 2019 divestment of the same PT MAS during its long standing unresolved dispute with Dayak Hibun communities).

For their part, global and local financiers and investors appear to have even less effective public accountability to affected communities despite some financial actors having commitments on human rights and the environment. Although information available on independent NGO platforms on private sector financial flows to corporations is increasing, transparency in the finance sector continues to be limited. At the same time, use of offshore financial jurisdictions and shadow companies to enable investments in the agroindustry and extractives sectors remains common.

Where it is possible to connect financiers to agribusiness clients or their parent companies, international banks, including those with policies on human rights, such as Rabobank, continue to deny accountability for financing harmful palm oil grower groups like GAR-GVL, claiming they are not closely 'connected' and their 'linkage' to harm is 'very indirect', despite pumping hundreds of millions into these agribusiness corporate groups (see Part II.B.3). Major billion-dollar conglomerates, like the Jardine Matheson Group engaged in the global palm oil trade, as well as trillion-dollar asset managers like Blackrock and Vanguard still have no specific policies on human rights, indigenous peoples and forest protection, though recent pronouncements by Blackrock on the need for their clients and financial institutions to disclose climate and human rights impacts are positive.²²² This study also finds that many global financiers and the corporate agribusiness groups in Indonesia and elsewhere that they finance or control do not have public grievance logs (e.g. Vanguard; Salim Group).

Secrecy and avoidance of liability: Accountability to affected rights holders and the public for adverse supply chain impacts on human rights is also seriously constrained by ongoing transparency breaches by corporate groups who fail to disclose ownership of subsidiaries or seek to purposely set up shadow companies to hide their commercial relationships. This study and related FPP investigations indicate that beneficial ownership of subsidiary companies associated with land conflicts and deforestation is not being disclosed by RSPO members like First Resources in potential violation of RSPO rules on transparency.²²³

More positively, in recent years there has been notable progress in the palm oil sector transparency through company disclosure of suppliers and mill lists using a common reference known as the Universal Mill List (see Annex A.(d)). All of the downstream companies reviewed in this study are found to publish mill lists since 2018, though their content and the frequency of updated information are variable. Some, such as Nestlé, disclose how specific mills are tied to direct suppliers, while others only publish the parent company name for each mill (Unilever, Cargill, PepsiCo), without publishing their direct supplier connections. Some companies update their published mill lists at least annually and some do this more regularly (e.g. Nestlé, AAK, ADM Europe). In other cases, mill lists are sometimes not being updated by major downstream companies for several years (e.g. Unilever, PepsiCo). Such delays in supply chain disclosure can hinder scrutiny and accountability. The experience of the palm oil sector in disclosing suppliers, including indirect suppliers, is a practice that should be adopted by other agribusiness sectors and market operators dealing in agri-commodities. Legislation on corporate governance and statutory regulations for supplies chains should ensure provisions requiring such disclosure (see recommendation III.C.4. below).

III. C. Lessons and recommendations for change

The findings in Part II generate immediate demands from affected rights holders and communities on connected and involved corporate entities, urging them to address human rights impacts and enable remedy. Additional sector-wide lessons and recommendations for downstream and upstream businesses, the finance sector and state actors flow from the same case evidence plus broader analyses in Part I and the Annex of this study.

III.C.1 Demands of indigenous peoples and affected communities in relation to specific cases

In all ten cases reviewed, aggrieved rights holders and human rights defenders hold strong convictions that corporate actors downstream in the supply chain and local and overseas financiers must *shoulder significant responsibility and take meaningful actions to address past and present human rights abuse* where they have direct or indirect business partnerships and/or commercial relations with harmful palm oil producers and processors. Affected communities and local social and environmental justice organisations call on businesses and relevant authorities causing and connected with harm to:

- a. Investigate and verify past and ongoing human rights and environmental impacts through independent assessments validated by communities and their advisors;
- b. Develop time bound action plans in close consultation with affected rights holders and their freely chosen representatives to agree on essential remedial measures and future actions required with suppliers, including decisions on continued engagement or disruption/termination of business relations;
- c. Put in place adequately resourced monitoring and implementation frameworks to ensure remediation actions are implemented as per agreements reached through good faith FPIC processes respecting affected community decision-making practices, customary laws and time-lines ;
- d. Work with rights holders, government agencies and other actors to *enable effective remedy, including land restitution and the settlement of tenurial disputes.*

Specific requests for remedy made in particular cases, include the following demands:



Dayak customary leaders carrying out a ceremonial at the inaugural meeting of the Union of Palm Oil Smallholders (SPKS), in Sanggau. Credit: Marcus Colchester / FPP

Case #1 > PT Pancasurya Agrindo (PT PSA)/First Resources: Nestlé, Cargill, Wilmar and other supply chain actors purchasing palm oil from First Resources should review the legality and operations of this parent group and its subsidiary PT PSA and compliance with RSPO and NDPE commitments. Due diligence should involve participatory mapping to identify affected indigenous territories, customary land, and other community lands that are subject to land disputes and or overlapping claims. Options for remedy must address community demands for land restitution and the grievances of community human rights defenders.

Case #2 > PT Sari Aditya Loka 1 (PTSAL1)/ Jardine Matheson/AALI: see general demands above.

Case #3 > PT Kresna Duta Agrindo (PT KDA)/ GAR-Sinar Mas-PT SMART: Nestlé, ADM, PepsiCo, GAR and Cargill Inc must review legality and UNGP-NDPE and RSPO compliance by PT KDA operations and activities. Actions should be taken to enable land restitution for Batu Ampar and other affected communities in Jambi Province. Specific measures should be put in place to protect human rights defenders, including safeguards to address ongoing risks of PT KDA intimidation, threats and criminalisation of land claimants and community leaders.

Case #4 – PT Harapan Sawit Lestari (PT HSL)/Cargill Inc: Dayak Jalai communities in Manis Mata insist that Cargill does not rely on a single RSPO complaint decision as effective redress for harms by PT HSL, and that actions are taken to enable remedy for all affected indigenous communities, including by enabling land restitution where requested. Cargill is called on to immediately review and enable remedy of all past and extant human rights impacts of PT HSL in Manismata Subdistrict and other indigenous territories affected by this Cargill subsidiary oil palm plantation and its operations. Careful due diligence in this case must involve safeguards to prevent PT HSL pressuring or intimidation and threats to communities and decision-makers to accept community settlement offers or drop complaints.

Case #5 > PT MISP/ Salim Group/Indofood Agri Resources Ltd: All connected downstream supply chain actors, financiers, and business partners, including Nestlé and Archer Daniels Midland (ADM), should require Indofood Agri and PT MISP to take actions to remedy past and ongoing human rights impacts on the Dayak Bekati indigenous people, transmigration settlers, and plasma farmers in Subah Subdistrict, Sambas District, West Kalimantan.

Case #6 > PTPN XIII/PTPN Group: Affected communities seek a fully transparent and participatory review of all the HGU obtained by the company and that connected downstream supply chain businesses. Nestlé AAK, PepsiCo, Cargill and Wilmar are urged to take actions to enable fair, effective and timely measures to resolve longstanding land disputes and facilitate land restitution through good faith negotiation and FPIC processes.

Case # 7 - PT Mitra Austral Sejahtera (PT MAS)/PT CAPITOL/former subsidiary of Sime Darby: Affected communities continue to insist that Sime Darby (an RSPO member) honour its commitments to assist in resolving the case, including providing funds to the Indonesian land agency to compensate PT MAS for restitution of the disputed land back to the Dayak communities, or cover their legal costs to seek land restitution through the courts; plus calls are made on the RSPO complaints Panel to complete its long delayed investigation and issue a progressive and helpful decision that requires Sime Darby to rectify and compensate Dayak Hibun communities in Kerunang and Entapang for grievances raised in complaints lodged with the RSPO from October 2012 to November 2019. Additionally, the RSPO is also requested to investigate Sime Darby's divestment of PT MAS in contravention of a formal appeal under General Assembly Resolution 15-6D adopted in 2018 calling on all RSPO members to refrain from any sale of subsidiaries subject to ongoing complaints.

Case # 8 > Agro Nusa Abadi (PT ANA)/Astra International Group/Jardine Matheson: Financial institutions funding AIG and Jardine Matheson plus midstream and downstream companies purchasing palm oil, including Nestlé AAK; PepsiCo; Wilmar and Unilever are requested to conduct due diligence to verify PT ANA compliance with HGU permit rules, properly investigate unresolved and outstanding community grievances, and enable remedy underpinned by *monitored and verifiable* time bound actions plans. Remedy should be enabled using direct or indirect use of

supplier management controls and contracts. Leverage actions should include consideration of suspension of purchasing contracts until independently verified evidence is available to confirm that remedial measures have been taken to the satisfaction of affected communities.

Case # 9 > PT Kurnia Luwuk Sejati PT KLS/ Murad Family: The Murad Family and PT KLS are called upon to stop hiring thugs and using the police and military to enforce plantation security; and to stop intimidation, threats and criminalisation of indigenous leaders, activists and human rights defenders. Downstream actors connected to this supplier, including Nestlé, ADM PepsiCo and Wilmar are requested to investigate this case and suspend purchasing of palm oil derived from PT KLS illegal operations and production processes.

Case #10 > PT Hardaya Inti Plantation (PT HIP)/ Cipta Cakra Murdaya (CCM) Group: Downstream companies, including PepsiCo, Wilmar and Unilever are called on to take immediate steps to conduct due diligence on this supplier and enable and encourage state authorities to ensure land restitution for land taken by the company through deceitful, manipulative and fraudulent processes in violation of FPIC. Due diligence and investigative actions in this case should involve commissioning of a full human rights and land rights impact assessment of the CCM Group, including its PT HIP subsidiary alongside an independent verification of the deforestation impacts of CCM Group and HIP in Central Sulawesi and other provinces.

III.C.2 Downstream businesses and private sector supply chain initiatives

While demand-side mandatory legal standards and enforcement frameworks on corporate governance and supply chain regulation are developing, it is essential that palm oil sector, the RSPO, and agri-commodity and food and beverage businesses and collective initiatives, take immediate steps to address existing supply chain impacts and risks. Changes in support of strengthened due diligence, improved quality assurance and delivery of effective remedy must also be supported by collective and sector wide initiatives, such as the Consumer Goods Forum coalitions for action and RSPO Shared Responsibility Working Group. Proposals for action include the urgent need for companies and corporate groups to:

- a. Develop and adopt improved methods and systems for supply chain due diligence to better implement human rights responsibilities and commitments, including implementation of the UN Guiding Principles on Business and Human Rights, with a focus on measures to identify, detect and address: (i) existing **land and environmental conflicts, contested rights and disputes**; (ii) violations of FPIC;²²⁴ (iii) adverse human rights impacts and risks, including threats to human rights defenders; and (iv) unresolved community concerns and grievances, including in relation to historical harms and injustice, such as abuse of land tenure and livelihood rights;
- b. Take actions to ensure application of **integrated human rights and environmental due diligence** in support of sustainable supply chain management and supplier codes of conduct in own operations *and* under collective industry initiatives, such as the Consumer Goods Forum Roadmaps for palm oil and other agri-commodities (see Annex I);
- c. Ensure that sustainable sourcing policies **apply social and environmental requirements on both direct and indirect (third party) suppliers (through requirements on the former)**;
- d. Adopt **dedicated policies and safeguards for human rights and environmental defenders**, including pledging zero tolerance for murder, violence, intimidation and reprisals against defenders;
- e. Support effective implementation of human rights, tenure, FPIC and related NDPE policies through the use of **operational policies** and **standard operating procedures**, which must be publicly disclosed;
- f. Implement own measures and support collective initiatives to enable **credible independent verification of compliance**, including field-based verification of respect for community tenure, FPIC, NDPE and HCSA commitments: Verification must be undertaken by independent third-parties, and not rely on supplier self-assessments or assurances by second-party technical service providers;

- g. Take measures to ensure greater transparency through timely **disclosure of due diligence actions planned or underway to address adverse supply chain impacts and risks** in line with the UNGP Reporting Framework: such disclosure should relate to *particular* operations, suppliers and jurisdictions (i.e. beyond generalised reports on actions on 'human rights' and statements made in response to formal complaints received or in reaction to critical NGO reports). (see also h below);
- h. Formulate, publish and apply **non-compliance action protocols** defining company due diligence measures and actions to address harmful human rights impacts, risks and problems detected in own operations and those of suppliers (including third party suppliers);
- i. Use **time-bound and monitored action plans** to address adverse impacts and non-compliance and enabler remedy for community grievances (in cases where continued engagement is deemed appropriate);
- j. Develop and disclose (as part of h.) **protocols for sustainable engagement and disengagement** with non-compliant suppliers and business partners, defining criteria and thresholds for suspension and termination (see below), ensuring respect for the views of affected communities and rights holders;
- k. Avoid divestment of subsidiaries who are the subject of ongoing unresolved complaints and judicial actions by communities and stay engaged until the matters is resolved fairly, where such continued engagement is requested by affected rights holders;
- l. Publicly disclose and *regularly* update lists of all direct *and* indirect suppliers for palm oil, including disclosing connections between mills and direct suppliers; and extend this transparency to other conflict agri-commodities;
- m. Take concerted actions and dedicate resources to address sector-wide problems and systemic contamination in supply chains through support for innovative initiatives for independent compliance verification and monitoring of action plans and remedies for adversely affected rights holders e.g. via the establishment of independently managed palm oil sector-wide human rights, tenure and environmental funds (including resources for legal action and land restitution where requested by impacted communities);
- n. Publicly express support for meaningful reform of the RSPO audit, verification and assurance frameworks to remove current conflict of interest hazards and address systemic defects.

III.C.3 International financiers

- a. Adopt and publish a code of practice to only finance and invest in oil palm companies and other agribusinesses, concessionaires and project developers able to demonstrate compliance with international human rights and environmental standards;
- b. Consult with human rights specialists, indigenous peoples and civil society to develop credible and reliable compliance verification methods and criteria, including requirements for evidence sources on human rights, tenure and environmental impacts and risks, with the explicit aim of going beyond the current limitations and moving away from reliance on company self-reporting;
- c. Additionally, adopt policies to require clients and investees, including corporate groups with agribusiness and plantation subsidiaries, to present independently verified evidence of respect for human rights, customary tenure and FPIC *before* agreeing finance and disbursements (validated documentation, including impacts assessments, FPIC agreements etc);²²⁵
- d. Develop and adopt due diligence practices to *verify* and cross-check ESG rating information on potential clients, investees and borrowers using independent information sources such as media, civil society, academic studies and community reports;
- e. Refrain from any decisions or influencing as a financier, investor or shareholder that may hinder or weaken human rights and environmental safeguards and reforms in the governance and operations of subsidiaries and client companies;

- f. Use contracts, finance agreements and other sources of leverage to promote adherence to agreed standards, including compliance with the UNGPs and related international law standards on human rights and seek to maximize leverage on clients and partners;²²⁶
- g. Ensure full public disclosure of lending, underwriting, shareholding and investment in high-risk sectors, including information on beneficial ownership and shareholder interests in specific investments in oil palm and other agribusiness companies to ensure transparency, including interests in shadow companies registered in offshore jurisdictions.
- h. Endorse public policy measures and legal regulations to ensure effective access to judicial remedy for affected rights holders and communities affected by the operations, business relations and investments of corporate actors, including for affected rights holders outside the country in which the business is domiciled.

In addition to these recommendations above tailored to companies and financiers, both market of these actors need to ensure that in upgrading their governance frameworks and making them fit for purpose, they put in place meaningful **incentives for staff and clients** to instil and encourage a culture of careful due diligence and responsible decision making on human rights and environmental governance. In terms of sustainable engagement and disengagement, both supply chain actors and businesses funding the agri-commodity sector must publish commitments to exclude or divest from, or cancel financing to companies in which human rights and environmental concerns are persistent or chronic. Additionally, financiers should put in place **non-compliance clauses** in financing agreements, including the right to interrupt or cancel financing where there are allegations of violation of land rights, and FPIC, serious unresolved community grievances and where killings, violence or threats are reported. Similar clauses should be inserted in agribusiness, trading, food and beverage and retail companies supplier codes of conduct, purchasing contracts and partnership agreements.

III.C.4 State actors and law makers in demand side countries:

The critical review of corporate practice in the palm oil and wider agribusiness sector in this report give rise to a series of recommendations for state actors to promote sector wide reforms to ensure improved corporate accountability, and legally require companies to take effective action to address adverse social and environmental impacts in their supply chains and portfolios.

It is recommended that legal instruments seeking to establish a mandatory corporate duty of due diligence must lead to binding requirements on businesses to establish and/or upgrade of internal due diligence and supply chain management systems in full alignment with the UNGPs²²⁷ and related human rights instruments to include provisions to require:

- a. Actions to mainstream human rights and environmental governance in company decision-making, operations and staffing structures, with adequate expertise and capacity to ensure effective due diligence;
- b. Development and adoption of company implementation and compliance frameworks to undertake *integrated* human rights and environmental due diligence, including systems for monitoring and verifying own business operations and those of direct and indirect suppliers and business partners;²²⁸
- c. Adoption and application of robust due diligence methodologies for identifying past and *extant* human rights violations, historical injustice, and land theft associated with existing and proposed commodity suppliers and business partners;²²⁹
- d. Use of supply chain assessments, rights holder mapping, impact and baseline studies to detect:
 - (i) Potentially affected rights holders, including indigenous peoples and customary landowners and related lands (including lands under claim);²³⁰
 - (ii) Harmful land acquisition, land clearance, land and environmental conflicts, disputes and contested rights;
 - (iii) Violence, repression and risks to human rights and environmental defenders and whistle-blowers;

- (iv) Previous and ongoing harmful human rights impacts and potential future adverse impacts and risks;
- (v) Unresolved community concerns and grievances connected with the supply chain (i.e. *beyond* logging formal complaints to the company or industry bodies)
- e. Measures to verify that business partners and suppliers have respected community land rights and complied with the core standard of free, prior and informed consent in relation to indigenous peoples and customary landowners;
- f. Adoption of a policy statement on commitment and company actions to remedy for adverse impacts on indigenous peoples, communities and workers;
- g. **Credible and effective independent verification of impacts, risks and compliance** as an essential element of corporate due diligence: verification must apply to own operations and those of suppliers and business partners and must be required to apply triangulation methods to cross-check assessments using different information sources including local and global civil society, community, scientific and media sources (see also m. below);
- h. Corporate *actions to address identified harms, serious potential risks and non-compliance* and enable remedial measures and remedy, including through and non-compliance protocols and **time bound actions plans** to enable and deliver corrective measures;
- i. Measures and commitments to follow up, monitor and update effective and transparent implementation of time-bound action plans and remedies in I above.
- j. Due diligence and ESG systems **investigate and take swift, definitive, and time-bound action with monitoring frameworks** where allegations of killings, violence or threats are identified in business operations or the activities and investments of business partners and suppliers;
- k. Effective corporate due diligence and actions to fulfill a responsibility to interrupt, suspend or cancel business relations, purchasing and supplier contracts according to the gravity of the cases in question, and subject to prior consultation with affected communities and rights holders;
- l. Transparency in commodity sourcing, business partnerships and supply chain traceability frameworks, including regular (at least annually) public disclosure of suppliers, including indirect (third party suppliers) for palm oil *and* other conflict agri-commodities, such as beef, leather, rubber, sugar, soybeans, cacao and their derivatives;
- m. Publication of commitments *and* standard operating procedures on human rights and NDPE safeguards, with requirements to disclose *specific* due diligence, for customary land tenure and FPIC for indigenous peoples and communities with analogous collective rights, including disclosure of frameworks for protecting human rights defenders and whistle blowers;

Information on legal compliance: To ensure effective implementation of supply chain and corporate conduct regulations, regulatory bodies overseeing compliance should establish and properly resource independent verification frameworks in the service of competent authorities and enforcement agencies. These frameworks should enable the creation of independent platforms to host evidence and information on (i) land tenure and land acquisition; including identification of contested tenure rights (ii) land and forest conflicts, (iii) reports of attacks and repression against human rights defenders, contested rights; (iv) **unresolved community grievances**; (v) FPIC compliance or violations; (vi) forest conversion and deforestation; (vii) damage to high conservation value and high carbon stock forests; and (viii) harm to local livelihoods. Where information is available, such platforms may detail infractions of human rights and environmental laws and standards tied to specific corporate actors, suppliers and productive jurisdictions. Crucially, these information platforms should allow for submission of independent information from upstream in the supply chain, including from indigenous peoples, civil society, affected communities, forest and human rights defenders and citizens in producer countries.

III.C.5 Producer countries and sub-national jurisdictions

In addition to demand side legislative measures to increase the accountability of downstream companies and operators dealing in palm oil and other high risk agri-commodities, stronger statutory controls and reform of national legal frameworks are needed in producer countries. Measures required include:

- a. Reform of national land allocation and concession laws to respect and safeguard customary land tenure rights, including over *untitled* community lands;
- b. Strengthened environmental licensing and land use change regulations that feature strong anticorruption safeguards and require FPIC of affected indigenous peoples and other customary land users and transparent procedures for certifying lands held and occupied under customary law;²³¹
- c. Establishment of a legal duty on domestic and foreign concessionaires and land developers to conduct due diligence on community land rights, land claims and livelihood resources and ensure respect for FPIC, with a requirement to present verified evidence of compliance with applicable law (including international human rights law) to the competent authorities *before* contracts or land clearance are authorised;
- d. Inclusion of human rights provisions in host government agreements, investor-State contracts, treaties and concession instruments to guarantee human rights protections and access to grievance mechanisms for third party victims, including through prohibition of stabilisation clauses that might otherwise infringe guaranteed human rights;
- e. Specific laws and dedicated judicial frameworks to enable land conflict resolution and land restitution to communities affected by illegal land acquisition and/or imposed concessions, including through transitional justice frameworks where necessary;
- f. Laws and protection systems that uphold the rights of human rights defenders, recognise the importance of collective systems of community protection, and prevent legal repression through the adoption of **anti**-Strategic Lawsuits Against Public Participation (SLAPP) legislation;
- g. Where the State is engaged in jurisdictional programmes for sustainable commodity production and forest protection, enact laws and regulations to ensure (i) governance structures are inclusive of customary rights holders and their freely chosen representatives; (ii) production standards uphold human rights, recognise and secure community customary land rights and FPIC, address past human rights and tenure violations and ensure access to justice; and (iii) effective compliance and enforcement mechanisms, including frameworks for independent verification.

III.C.6 Corporate accountability and transparency: all state actors

This review confirms that current structures for corporate accountability in law and in non-judicial frameworks are weak and require major strengthening. As well as the adoption of a binding UN treaty on Business and Human Rights covering all corporate actors (see Annex I:C4), reform of legal frameworks and new supply chain and corporate conduct legislation in both producer and consumer countries is needed to legally establish:

- a. An explicit duty on company directors to ensure respect for human rights throughout commercial operations and partnerships and to give serious attention to the impact of the company's business on people and the environment;
- b. Administrative, civil and criminal liability of CEOs for failure to prevent or address social and environmental harms associated with business operations, investments and supply chains;
- c. Clear and strong sanctions for companies in violation of applicable due diligence laws and supply chain regulations;
- d. Access to judicial remedy in the courts of the country where companies are domiciled for rights holders and communities negatively affected by their operations, business relations and investments
- e. Public disclosure of beneficial ownership of subsidiary and shell companies
- f. Disclosure of financier and asset manager clients, shareholdings and assets at home and in overseas jurisdictions
- g. Public disclosure and reporting on corporate actions taken to address adverse human rights and environmental impacts and potential risks in operations, investments, and supply chains (see also C.3, C.4 And C.5 above).²³²

Loopholes in corporate accountability should also be closed via adoption of national laws and policies to prohibit the inclusion of Investor-state dispute settlement (ISDS) or investment court system (ICS) provisions in new investment and trade agreements and treaties. Actions should also be taken to amend existing agreements and treaties to remove ISDS provisions; or, at a minimum, amendments should be put in place to limit investor use and abuse of these arbitration mechanisms and narrow the currently excessive scope of compensation.

Finally, as noted in Part I, alongside actions to ensure responsible corporate conduct, governments must adopt policies and sustainability initiatives nationally and globally to enable transitions towards sustainable, resilient and alternative economies. National governments, international financial institutions and the intergovernmental bodies must uphold existing commitments and protections for human rights and the environment and prevent any weakening of social and environmental standards through regressive economic 'recovery' measures during and following the current pandemic.

Annexes

Annex I: Summary critical review of private sector and state initiatives on sustainable supply chains and responsible corporate conduct

Over the last 25 years some major transnational food, beverage, vegetable oil and feedstock companies along with agri-commodity traders have responded to long-standing criticism of harmful impacts of their businesses by developing voluntary 'corporate social responsibility (CSR)' principles, putting in place environmental and social governance (ESG) frameworks, and adopting sustainability and 'responsible sourcing' policies. Companies have also become members of certification schemes and set time-bound targets for fully certified supplies that are compliant with social and environmental standards of the scheme.²³³

A. Industry standards, company standards and private sector initiatives

1. **Voluntary commodity certification standards:** A significant number of major companies and traders have elected to become members of certified multistakeholder commodity schemes including RSPO (palm oil), FSC (timber, pulp and paper), Bonsucro (sugar), UTZ (coffee) and IFOAM (organic certification) etc. Many of these schemes in turn are part of the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance that provides a code of conduct for sustainability standards.²³⁴ These certification schemes have been in existence for more than a decade. More recently, specific mineral sectors have also adopted certification standards.²³⁵ Standards across different certification schemes are variable, with differential treatment of core standards like free, prior and informed consent and respect for customary tenure rights. The most recently updated standards adopted by the Roundtable on Sustainable Palm Oil (RSPO) in 2018, for example, include comprehensive rules set for new plantation operations, zero deforestation, human rights and FPIC. The RSPO also adopted a progressive policy on human rights defenders and whistle-blowers the same year.²³⁶ Scheme rules require member company *grower* operations to meet combined social and environmental certification standards, report annually on performance, conduct compliance audits and adhere to a member's code of conduct. Major sustainability and accountability loopholes remain in the RSPO framework of standards, however. In relation to RSPO 'mass-balance' supply chain certification, for example, standards and audits focus on palm oil mills certifying supplies of fresh fruits from RSPO certified plantations, but allow independent processors, traders and retailers to mix certified and uncertified sources without any explicit requirements for supply chain management or due diligence on human rights and the environment.²³⁷ Certification standards are sometimes backed by complaints procedures that can be used by communities and civil society to raise concerns about members. In practice, all these certification schemes continue to suffer from multiple accountability and compliance problems, with land rights and FPIC standards especially suffering zero or poor compliance.²³⁸ In other cases, local certification schemes such as the Indonesian Sustainable Palm Oil (ISPO) standard introduced in 2011 by the Government of Indonesia do *not* uphold international standards on human rights and have been denounced by indigenous peoples and NGOs for failing to require genuine sustainable production benchmarks.²³⁹
2. **Human rights commitments as part of CSR policies:** Numerous companies across agribusiness, extractive and manufacturing sectors have endorsed the UN Guiding Principles on Business and Human Rights (UNGPR), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and have adopted human rights policies, often with specific commitments to respect labour rights, the rights of indigenous peoples, free prior and informed consent (FPIC) and tenure rights (See, for example, Table B).²⁴⁰ A growing number of supply chain

actors further downstream like retailers also have stand-alone human rights policies and NDPE policies that include commitments to human rights.²⁴¹ Those corporations that do possess a public human rights policy usually affirm that they are committed to human rights due diligence and application of the UNGPs, though in practice actual due diligence methods and actions are rarely disclosed – a major shortcoming in accountability (see below).²⁴² While some companies have specific commitments on indigenous peoples and land rights, it is noteworthy that many corporate policies on human rights do not address indigenous rights, human rights defenders nor rights to land water, and food security, and tend to focus on labour rights.²⁴³ This study (Part I and Part II), as well as other NGO assessments, have pointed out that many companies that have social and environmental policies or statements do not apply practical operating procedures to apply them. Even if they do have such “SOPS”, for example on land rights and FPIC, they are not usually disclosed to the public.²⁴⁴ These shortcomings constitute serious accountability and sustainability gaps. It is also significant that it is common for transnational downstream companies to identify ‘salient’ human rights issues, restricting ‘human rights’ salient issues to core labour rights or a subset of workers’ rights (e.g. freedom from forced labour), without addressing the broader family of human rights typically impacted by agri-commodity production and often without attention to critical ‘issues’ including repression, attacks and violence against human rights and environmental defenders. For this reason, NGOs, including FPP, are urging and advising companies to apply a comprehensive and integrated approach to human rights in supply chain due diligence.²⁴⁵ In April 2021, in response to this consistent pressure from human rights organisations, several companies are in the process of developing dedicated policies on human rights defenders, including Mars, Unilever and Wilmar.

3. **NDPE commitments:** Corporate attention and commitments to environmental protection have been increasingly visible in the last decade among some ‘market leaders’, in response to civil society reports exposing ongoing commodity driven deforestation and growing public demand for sustainable products. Since 2010, many transnational companies and industry associations like the Consumer Goods Forum (CGF) have made public pledges to eliminate deforestation and exploitation from commodity supply chains through ‘**No deforestation, no peat, and no exploitation (NDPE) commitments**’ (Table B).²⁴⁶ Some major businesses like Coca Cola, Nestle and PepsiCo have responded to targeted NGO campaigns to adopt ‘**zero tolerance**’ pledges on land grabbing, child labour and free, prior and informed consent (FPIC) for indigenous peoples (See Figure 1).²⁴⁷ In 2014, many companies pledged to work in partnership with governments and civil society in efforts aimed at “eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020”, and to uphold the rights of indigenous peoples “...especially those pertaining to their lands and resources.”²⁴⁸ Regrettably, corporate targets for achieving supply chains free from deforestation by 2020 have not been met by CGF members and other companies (Part I and 7. below). (see also f below).
4. **Supply chain traceability and transparency:** A significant number of downstream companies, including, Nestlé, AAK, ADM, Unilever and Cargill have developed traceability systems over the past five years to trace their palm oil supplies back to the mill level.²⁴⁹ The palm oil sector, sustainable business advisors and NGOs have developed unique codes for palm oil mills worldwide.²⁵⁰ Several large PO companies now disclose their suppliers using these unique codes that assists transparency and public scrutiny, and supplier lists include indirect suppliers.²⁵¹ This a positive development that should be extended to other commodity sectors. In this FPP analysis the **Universal Mill List (UML)** is used to scrutinise upstream and downstream supply chain actors (See Part II). This transparency is progressive and assists civil society in scrutinising corporate supply chains and performance. While use of the unique UML codes is common across all companies now publishing their suppliers and mill lists, it is found that other contents in the disclosed lists are variable. These lists should be further harmonised to assist supply chain mapping for due diligence and public accountability (e.g. all downstream companies should publish all direct suppliers connected with third party suppliers in their mill lists). Further upstream in the supply chain, transparency and traceability are seriously lacking as corporate groups and their subsidiaries, fail to disclose their third party (indirect) suppliers of fresh fruit bunches produced on plantations associated with rights abuse, deforestation and other environmental damage.²⁵²

5. **Social and environmental standards and toolkits:** Since 2016, progressive joint NGO and company²⁵³ work on establishing standards and *combined human rights and environmental methodologies* for safeguarding forests, including indigenous peoples' forest lands, has been undertaken under the High Carbon Stock Approach (HCSA)²⁵⁴ and High Conservation Value Resource Network.²⁵⁵ HCSA standards include rigorous methodologies for protecting customary tenure rights, recognising community forests and ensuring respect for FPIC under Module 2.0 of the HCSA, and its associated Social Requirements and Implementation Guidance recently updated in 2020.²⁵⁶ In practice, however, effective implementation and accountability remain a major challenge on the ground.²⁵⁷
6. **Shared and collective approaches:** In the face of missed NDPE targets and ongoing complaints denouncing their operations, companies have responded with **innovation groups** involving several different corporate actors; multi-stakeholder **collaborative initiatives** and sector-wide approaches to address systemic problems in commodity supply chains. Some members of the RSPO, for example, have set up the Palm Oil Collaboration Group (POCG) to work with commercial 'technical service providers' and NGOs to improve reporting and supplier management (see (g) below). The POCG has several working groups, including one on 'social issues' that is currently developing core guidance to members on human rights due diligence, including in relation to land rights. The RSPO has also set up a '**shared responsibility**' working group to encourage processors, buyers and traders of palm oil to work together to ensure full compliance with the standards that currently apply to RSPO growers.²⁵⁸ In 2020, the Consumer Goods Forum (CGF) and its members have established **coalitions for collective action** that are currently developing joint commodity 'roadmaps' for palm oil, soybeans, paper and pulp.²⁵⁹ The CGF has also established a coalition for action on human rights for the development of strengthened human rights due diligence systems among CGF members. The initial focus is on forced labour, but the coalition aims to expand its work to land rights, FPIC and wider human rights due diligence in due course with the formation of a working group on 'land rights and human rights defenders' in 2021.²⁶⁰ Collective retailer and downstream company initiatives supporting human rights, free prior and informed consent and supply chain transparency have also been set up in different consumer countries, including the Palm Oil Transparency Coalition (POTC) in the UK, though solid systems for verifying supply chain compliance with human rights and environmental standards are not in place (see, for example, FPP findings in Part III of this study).²⁶¹
7. **Monitoring, verification and reporting:** A number of companies now report on their treatment of social and environmental matters via agreed voluntary CSR reporting frameworks like the Global Reporting Initiative (GRI).²⁶² Some are seeking to develop more effective reporting systems on social and environmental performance, including in relation to upstream supplier respect for labour rights, land rights and FPIC. One example is the No-deforestation, No-peat and No-exploitation (NDPE) Implementation Reporting Framework (NDPE IRF) for palm oil being tested by the POCG (see (f) above). The IRF seeks to classify supplier mills in five categories according to NDPE compliance and availability of information, including a non-compliant category that requires 'action'. Participating companies include AAK, BASF, Bunge, Cargill, COFCO, GAR, General Mills, IKEA, ISF, Kellogg, Mars, McDonalds, Mewah, Mondelez, Nestle, PepsiCo, Sime Darby, Unilever, and Wilmar.²⁶³ Another example is the Palm Oil Innovation Group (POIG) system for verification adopted in 2019. To date, however, only Musim Mas verified its own operations, with several plantations not yet being certified and lacking legal land use permits. Other POIG member verification reports are incomplete or out of date (e.g. Daabon).²⁶⁴ The credibility and usefulness of these emerging supply chain monitoring and reporting initiatives are unproven. Most remain in developmental and pilot stages, and rely to a significant extent on flawed self-reporting frameworks. IRF agreements on independent verification systems to validate if a mill classification as 'compliant' or 'non-compliant' are still under discussion in 2021. NGOs involved in these initiatives, including FPP and RAN, emphasise that without robust, transparent and credible methods for independent verification of compliance with all requirements of a NDPE policy, including verification of fulfilment of land and FPIC rights, such reporting approaches risk generating misinformation that would hinder rather than help supply chain due diligence.

Table B: Human rights policies, NDPE commitments and due diligence disclosures among a sample of downstream and upstream companies

	DD	Human rights/ UNGP/HRD	Tenure/VGGT/ ZTLG	IP/FPIC/ UNDRIP	NPDE/HCSA/ IRF	PO policy	RSPO	AFi	GT	RSP	Supplier CoC/indirect
Downstream Examples						RS					
Unilever	ndet	✓ ³⁰⁸ ✓ ✓ No SOP	✓ X ?	P ✓ X	✓ ? ✓	✓ ³⁰⁹	✓	?	✓	✓ ✓	✓ X
Cargill	ndet ³¹⁰	✓ ✓ X -ud	✓ ✓ ✓ (no public SOPs)	✓ ✓ X (no det)	✓ ✓ ✓	✓	✓	?	✓	✓ X	✓ p ³¹¹
Nestlé	p ³¹²	✓ ✓ P (no SOP) ³¹³	✓ ✓ ✓	X ✓ ³¹⁴ X	✓ ✓ ³¹⁵ ✓	X	✓	?	X ³¹⁶	✓	✓ ³¹⁷ p ³¹⁸
PepsiCo	p ³¹⁹	✓ ✓ X ³²⁰	✓ ³²¹ ✓ ✓	✓ ✓ X	✓ ✓ ✓	✓	✓	?	✓	✓ ³²²	✓ ?
Wilmar International	p ³²³	✓ ✓ ud (partial)	✓ ✓ ✓	✓ ✓ 0	✓ ? ³²⁴ ✓	✓	✓	?	✓		✓ ✓ p
Upstream Examples											
GAR	p ³²⁵	✓ ✓ ³²⁶ X	✓ ✓ ndet	✓ ✓ ³²⁷ X	✓ ✓ ✓		✓	p ³²⁸	✓ ³²⁹	✓ ³³⁰	✓ ³³¹
Sinar Mas Agro Resources (PT SMART ³³²)	p	✓ ✓ X	✓ ✓ ndet	✓ ✓ X	✓ ✓ ✓		✓	?	✓	✓	✓
First Resources	ndet	✓ ³³³ p ³³⁴ X ³³⁵	✓ X ✓ ³³⁶	✓ ✓ X	✓ ✓ ?		✓	?	✓ ³³⁷	✓	?
Astro Agri Lestari	ndet	✓ ✓ X	p ³³⁸ X X	✓ ✓ X	✓ ✓ ?		X	?		✓ ³³⁹	✓ ³⁴⁰

KEY: DD: human rights, social and environmental due diligence methods published; UNGP – UN Guiding Principles on Business and Human Rights; HRD = Human Rights Defenders zero tolerance commitment and operational policy; P: partially/partial information; SOP: Standard Operating Procedure/operational policy; RSP: responsible sourcing policy; ZTLG: zero tolerance land grabs; GT: Grievance tracker; VGGT – Voluntary Guidelines on the Governance of Tenure; NPDE – No deforestation, No Peat, No exploitation; AFi – Accountability Framework (guidelines on ethical supply chains); n.d. No information; no det: No detail; ud under development

8. **Guidelines on supply chain management:** The wide variety of certification standards and large number of companies that are still not members of such schemes has also led companies and CSOs under the Accountability Framework Initiative (AFi) to develop a meta standard for sustainable or “ethical” supply chains (see Box – insert). These guidelines apply the **integrated approach** of human rights and environmental due diligence and operational policies and provide thematic guidance to companies on how to set up effective environmental and social governance framework for their companies, supply chains and business partnerships. Specific guidance is provided in relation to indigenous peoples’ rights,²⁶⁵ FPIC²⁶⁶ and supply chain management.²⁶⁷ In many of these initiatives, including the AFi, guidelines on business and human rights have been drawn up through multi-stakeholder groups that involve both NGOs and companies.²⁶⁸
9. **Supply chain simplification:** Some major downstream companies are now adopting explicit strategies to *simplify* their supply base in order to enable more effective due diligence and control over supplier compliance with human rights and environmental standards. These companies maintain that by focusing on a specific number of Tier 1 suppliers, complexity can be reduced and more detailed attention can be given to their third-party suppliers and verification exercises. Mars, for example, has sought to increase visibility and improve due diligence on its palm oil supply chain by cutting the number of its supplier mills to less than 100 from 1,500 previously, and plans to reduce to just 50 by 2022.²⁶⁹ Simplification of a company’s supplier base may offer greater traceability and leverage on suppliers and could enable better supply chain accountability, but this approach carries a moral hazard if a downstream company proposes to offload existing underperforming suppliers who are connected to ongoing or past human rights abuse (see Part II and Part III.). This approach aims to reduce exposure to deforestation and other risks by consolidating suppliers with mature plantation land, yet it is not without risk as many such land banks in Indonesia were established without consent of Indigenous Peoples and affected communities and social harms continue, including in relation to ongoing labour rights abuse.

B. Intergovernmental and State responses

Numerous guidelines on supply chain due diligence and responsible business conduct and investment and sustainable commodity production have been developed by intergovernmental bodies for use by governments and the private sector.

B.1. Soft law and international guidelines

In 2011 the United Nations Human Rights Council unanimously endorsed Guiding Principles on Business and Human Rights (UNGP).²⁷⁰ Efforts have also been made by countries to implement the 2011 UN Guiding Principles on Business and Human Rights through National Action Plans (NAPs).²⁷¹ The G7 has called on companies domiciled in their countries to “....implement due diligence procedures regarding their supply chains.”²⁷² In 2020, the UN Human Rights Council and UN Working Group initiated development of guidelines on the corporate responsibility to respect human rights in relation to human rights defenders.²⁷³

In 2012, the UN Committee on World Food Security (CFS) adopted comprehensive soft law standards on land tenure governance,²⁷⁴ which now count with a related detailed set of FAO implementation guidelines for state actors, companies and investors, including in relation to FPIC, indigenous peoples and collective land rights²⁷⁵ and land-based investments.²⁷⁶ The OECD has issued human rights and environmental due diligence guidance for businesses²⁷⁷ as well as specific guidance for investors.²⁷⁸ OECD-FAO guidance has also been developed for agricultural supply chains²⁷⁹ and for the mineral supply chains linked to conflict zones.²⁸⁰ International guidelines and principles on addressing risks associated with security forces and paramilitary groups have also been developed through multistakeholder initiatives, such as the *Voluntary Principles on Security and Human Rights*.²⁸¹

As noted A above, many companies have made specific pledges to uphold the UNGPs, OECD guidelines and other soft law instruments like the FAO voluntary guidelines on tenure governance (VGGT) and UNDRIP, which are sometimes referenced in their human rights and sourcing policies and operating procedures. However, while some companies issue annual human rights reports they are descriptive, may only mention a few flagship actions without disclosing information on the due diligence in relation to particular company operations, business partners, supply chains and geographies, and without disclosing actions taken to address specific impacts and risks identified. These are serious shortcoming in business accountability and transparency that breach the UNGPs and its reporting framework,²⁸² and are not compliant with VGGT. Other applicable standards on business transparency are not made public (see Part II).

B.2 Transparency and disclosure initiatives

Governments, companies and civil society and financial institutions have established several initiatives to promote transparency in global supply chains associated international financial flows. The **Extractive Industries Transparency Initiative** (EITI) sets a global standards of requirements for governments and industry in disclosing contracts, concession agreements, finance sources and benefit sharing in extractive industry commodity value chains.²⁸³ The process has opened some important space for rights holders at the country level though its capacity to enable redress and sector reforms is limited by its primary focus on reporting and disclosure (not redress and remedy). More recently, NGOs and intergovernmental bodies and several companies have set up the **Task Force on Climate-related Disclosures** (TCFD), and the **Taskforce on Nature-related Financial Disclosures** (TNFD) to promote corporate and financial institution reporting on the environmental and climate footprint of their businesses and financial investments.²⁸⁴ The UK, France, Switzerland, the Netherlands, Peru, Mexico, Argentina and Kenya are governmental participants, while UN members include UNEP, UNDP, GEF, and the Secretariat of the Convention on Biological Diversity (CBD). Public banks like the IFC and EIB are involved as well as private banks and financiers such as Credit Suisse, Danske Bank, PNB Paribas, HSBC, RaboBank, Standard Chartered, Wells Fargo Asset Management, among others. These global transparency initiatives are focused primarily on environmental reporting. In 2021 it is unclear how or if these initiatives will promote corporate disclosure of business impacts on people and human rights alongside impacts on 'nature'.

B.3 Jurisdictional pilot programmes in producer countries

A number of multi-stakeholder initiatives on sustainable supply chains and zero-deforestation, including the Tropical Forest Alliance (TFA)²⁸⁵ and the RSPO palm oil certification scheme, have endorsed so called jurisdictional approaches to sustainable commodity production and sourcing.²⁸⁶ Several pilot schemes for palm oil have been set up at the sub-national level in Malaysia, Indonesia and Ecuador, while other commodities including beef and soybeans form the focus of such schemes in Colombia (Caquetá) and Brazil (Mato Grosso). Under these schemes, in addition to business and civil society, the local and national government are key actors. Sustainability standards become statutory norms to be complied with by all producers within a given legal and administrative area and the state is part of the framework for enabling and enforcing compliance. FPP case studies indicate that many of these schemes are still at an early stage and their potential for genuine sustainable production and accountability of producers and supply chain actors to affected communities and rights holders is not yet demonstrated.

Early indications suggest the governance of such schemes must be inclusive of rights-holders groups if progressive reform is to be achieved. In addition, the effectiveness of such schemes requires the application of human rights-based approaches, truly independent verification and grievance mechanisms in conjunction with required credible compliance and enforcement mechanisms to address 'freeloaders' and 'laundering' of non-compliant goods.²⁸⁷

B.4 Legal measures and statutory due diligence regulations in consumer countries

While the UNGP and OECD guidelines establish important principles for business actors and states, corporate justice organisations, human rights defenders and indigenous peoples' organisations have stressed the shortcomings of voluntary frameworks. International human rights bodies have likewise pointed out the shortcomings of voluntary approaches to corporate conduct (see also Part I).²⁸⁸ In addition to calling for strong national legislation, corporate justice movements have long

demanded a binding international treaty on business and human rights. With formal backing from some producer countries including Ecuador, the UN passed a Resolution to start work to create a binding treaty in 2014 and since then an *Open-ended Intergovernmental Working Group (OEIGWG) for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights* has met several times, and there is now a draft negotiating text. Work has progressed slowly, and consumer countries like the UK have repeatedly questioned the process, while the EU still does not have a formal mandate to enter negotiations on the details of the instrument.²⁸⁹

The second working draft of the UN treaty on business and human rights (released in 2020) contains draft provisions that would require transnational companies to carry out human rights due diligence to identify and assess potential human rights impacts and risks. It also proposes requirements to oblige businesses take steps to prevent and mitigate harmful impacts and risks, monitor the effectiveness of actions taken, and publicly report on how business would address harms and provide remedy where necessary. The current draft also contains provisions that would allow legal cases to be filed by aggrieved communities and victims of abuse in different jurisdictions. Given its potential to increase corporate accountability, it is likely that the treaty development process will be prolonged. Meanwhile, civil society and social movements continue to press their governments and trade blocks like the EU to back the process and support adoption of a strong instrument. One potential drawback of the treaty as currently conceived is its limitation of scope to transnational corporations, which might potentially open up a large legal loophole for domestic companies in producer countries that are associated with human rights abuse and provide commodities for global supply chains. Other loopholes include what seems like unfettered investor access to international arbitration via Investor State Dispute Settlement (ISDS and ICS) provisions found in thousands of trade and investment agreements, which continue to undermine corporate accountability and can allow investors to hinder national laws and public policy advancements on human rights and the environment.²⁹⁰

In response to public demands for mandatory regulation, several countries have developed or are currently developing legal instruments to establish a corporate duty of due diligence. The scope of early legislation has tended to focus on labour rights.²⁹¹ The UK adopted the Modern Slavery Act in 2015 requiring UK companies to report annually on actions taken to eliminate slavery from their business operations. France adopted a Duty of Vigilance Law in 2017 that requires large French companies to identify and 'map' risks in their supply chains and develop action plans to prevent and mitigate harm.²⁹² The Netherlands adopted a Child Labour Due Diligence Law in 2019, which comes into force in 2022. Legal scholars have already pointed to strengths and weaknesses in these instruments, particularly in relation to scope, clarity on corporate obligations and weak frameworks for liability.²⁹³

In 2020-21 momentum for statutory regulation of companies and conflict commodities has gathered pace with some major companies and international investors adding to calls for mandatory due diligence rules to "level the playing field".²⁹⁴ In March 2020, for example, a multi-stakeholder group of corporate conduct and environmental experts issued guidance to the UK government under its the Global Resources Initiative (GRI) calling for urgent measures to legislation to require **integrated human rights and environmental due diligence** on UK companies and the finance sector to tackle the UK commodity footprint overseas. Specifically, the GRI recommended that "...the UK "urgently introduce" a mandatory obligation on companies dealing in forest-risk commodities, which should require them "...to analyse the presence of environmental and human rights risks and impacts within their supply chains, take action to prevent or mitigate those risks, and publicly report on actions taken and planned."²⁹⁵

B.4.1 Demand side regulatory measures: In April, the EC Directorate for Justice announced that legislation will be tabled in 2021 that would require EU companies to undertake human rights due diligence.²⁹⁶ In 2019 the EC also issued a communication on forests which mandated the EC to explore regulatory options for supply chain due diligence for 'forest risk commodities.' In October 2020, the European Parliament recommended that EC legal drafters ensure measures establish a corporate duty of combined environmental and human rights due diligence, including establishing obligations to uphold indigenous peoples' rights in imported agri-commodities that maybe associated with deforestation and rights abuse.²⁹⁷

In the United States there are also several ongoing processes with the aim of regulating corporate accountability and deforestation in supply chains. A draft of the Corporate Human Rights Risk Assessment, Prevention, and Mitigation Act was introduced to the US Congress in July 2019. This Act would require publicly listed companies to conduct an annual assessment of the human rights risks and impacts in their operations and throughout their value chains and to report on actions to avoid, mitigate or remediate the identified risks or impacts.²⁹⁸ Further, a movement of organisations working on corporate accountability are pushing to model a law to prohibit corporate violations of human rights throughout company supply chains and mandate human rights due diligence on the structure of the Foreign Corrupt Practices Act. The existing draft Bill contains provisions for liability and a dedicated enforcement framework and is likely to be introduced to Congress in 2021.

Another draft Bill proposes legal prohibitions on a number of identified forest risk commodities to prevent access to the US market if they are produced on illegally deforested land. This Bill would work together with the 1930 US Tariffs Act, which empowers the US Customs and Border Protection to exclude whole categories of products from the US market. It may also feature a third-party complaints mechanism for aggrieved parties in producer countries.²⁹⁹ At the same time, the states of California and New York are proposing adoption of state deforestation free purchasing acts for due diligence in public procurement of wood-based products and timber.

In November 2020, the UK published a draft law establishing a mandatory requirement on British business prohibiting the importation of commodities embodying illegal deforestation and land conversion. Unfortunately, the *effectiveness* of the proposed law is in doubt as it fails to take up the GRI recommendations to require UK businesses to undertake integrated social and environmental due diligence, would not apply to the finance industry and only requires *status quo* compliance with national laws in producer countries (which they are already required to do).³⁰⁰ There are also legitimate concerns the UK law as currently formulated might create perverse incentives for producer countries to *lower* legal regulation standards on land conversion to enable 'legal' deforestation. NGOs and indigenous peoples continue to push for adherence to international law and sustainability standards on land rights and FPIC at the beginning of 2021. While there maybe scope for some reference to free, prior and informed consent in secondary legislation, UK requirements for companies to meet international human rights law obligations under the law unfortunately look unlikely.

Given the lack of adequate protections in national land allocation and environmental laws, Indigenous peoples and human rights defenders in producer countries have stressed that it is essential that mandatory regulatory measures have explicit protections for customary land and livelihood rights. For this reason, indigenous peoples and corporate justice organisations are calling on law makers in the UK, EU and US to ensure legislation on corporate governance and supply chain due diligence applies explicit protections and remedies for human rights, including collective rights and customary tenure rights in line with international law and sustainability standards.³⁰¹

In the meantime, affected rights holders, victims of corporate abuse in producer countries and allied human rights organisations in countries where transnational businesses are domiciled continue to bring tort cases with some degree of progress in English and Dutch Courts. These cases have affirmed in some instances companies do have a duty of care for harms caused by their subsidiaries and supply chains overseas,³⁰² though precise rulings on the scope of corporate liability mostly remain pending. In January 2021, for example, the judgement of the Dutch Court of Appeals of The Hague in the case of *Four Nigerian Farmers and Milieudefensie v. Shell* ruled that that a parent company has a duty of care with regard to foreign rights holders seeking redress for harm.³⁰³ These are important legal gains for corporate accountability. As noted above, human rights advocates, indigenous peoples and social movements are demanding that new legal instruments on corporate conduct and due diligence expand the scope of liability further, to hold parent companies and transnational business liable for harm to the full spectrum of human rights, including violation of tenure and community property rights.³⁰⁴

B.4.2. Smart Mixes and Supply Side measures: Civil society and multi-stakeholder initiatives increasingly emphasise the need to apply a mix of statutory and non-regulatory approaches to corporate accountability and supply chain reform. This approach advocates for the application of national and international regulations in law and international trade agreements as well non-regulatory actions, such as bilateral ‘partnerships’ between importing and exporting countries to promote production and trade governance reforms. The precise content of these mixed approaches and which benchmarks for accountability and sustainable production would apply vis-a-vis national and international standards, however, remains undefined.³⁰⁵

In 2021, proposals for ‘forest partnerships’ with producer countries are being explored by the EU under the EC Directorate General for International Partnerships (DG-INTPA, formerly DEVCO).³⁰⁶ At the same time, the UK government with facilitation by the Tropical Forest Alliance (TFA) is convening a series of government-government Forest, Agriculture and Commodity Trade (FACT) Dialogues in the run up to UNFCCC COP26, in which a supply side ‘partnership’ approaches to sustainable commodity production free from deforestation are a prominent theme.³⁰⁷ The focus of these dialogues is production and trade in beef, soybeans, coffee, cacao and palm oil. Although the UN Sustainable Development Goals are referenced in the FAT dialogues, discussions on commodities free from human rights abuse and land grabbing have not so far been prominent in initial government inputs to this process. Rather, the focus is on zero deforestation and the creation and *growth* of ‘sustainable production’ (including among smallholders) and global ‘green’ markets for environmental services and ‘nature-based solutions.’ At the beginning of 2021 it remains unclear how related TFA-led multistakeholder dialogues involving indigenous peoples and civil society will influence the government-to-government FACT discussions, nor how inputs of rights holders will be addressed in any formal proposals, pledges or initiatives to be announced by governments in COP26.

As recommended in Part III, in order to be effective, supply-side initiatives and ‘partnerships’ for sustainable production must develop and apply strengthened legal controls on businesses and host governments in producer countries and enable tenure governance reforms that recognise customary land rights. In order to ensure genuine sustainable trade, such interventions need to apply integrated human-rights based, environmental and agro-ecological approaches reinforced by effective frameworks for monitoring, enforcement and redress. At the same time, transformations in agrarian policy away from industrial monocultures and conventional economic growth models towards support for diverse steady state economies and local community food and farming systems are needed to ‘build back’ resilient economies and societies after the 2020-21 pandemic (Part I)

Annex II: Acronyms and abbreviations

AALI	Astra Agro Lestari Group
ACOP	Annual Communication of Progress (RSPO member report)
AFi	Accountability Framework Initiative
ADM	Archer Daniels Midland
BRIMOB	Mobile Brigade Corps (Indonesian police unit)
CDC	Commonwealth Development Corporation (CDC)
CGF	Consumer Goods Forum
CIFOR	Center for International Forestry Research
CoC	Code of Conduct
CSR	Corporate social responsibility
EJA	Environmental Justice Atlas
DD	Due diligence
DG-INTPA	Directorate General for International Partnerships (European Commission)
ESG	Environmental and social governance
FACT	Forest, Agriculture and Commodity Trade Dialogues
FPIC	Free, prior, and informed consent
FPP	Forest Peoples Programme
GAR	Golden Agri-Resources
GRI	Global Resource Initiative (UK)
GRI	Global Reporting Initiative (Netherlands)
HCSA	High Carbon Stock Approach
HCV	High Conservation Value
HGU	Hak Guna Usaha (Land Use Business Permit)
HRD	Human Rights Defender
HRIA	Human rights impact assessment
ICOF	Inter-Continental Oils and Fats (Musim Mas Group)
ICS	Investment court system
IFC	International Finance Corporation (World Bank Group)
IRF	Implementation Reporting Framework (of Palm Oil Innovation Group)
ISDS	Investor-state dispute settlement
ISEAL	International Social and Environmental Accreditation and Labelling
ISPO	Indonesian Sustainable Palm Oil standard
KKI WARSI	Komunitas Konservasi Indonesia (Indonesia Conservation Community)
KKPA	<i>Kredit Koperasi Primer Anggota</i> (state sponsored out grower credit scheme)
KPK	<i>Komisi Pemberantasan Korupsi</i> (Corruption Eradication Commission)

mHREDD	Mandatory human rights and environmental due diligence
MUFG	Mitsubishi UFJ Financial Group
NDPE	No Deforestation, No Peat, No Exploitation
OECD	Organisation for Economic Co-operation and Development
PO	Palm oil
POCG	Palm Oil Collaboration Group
POIG	Palm Oil Innovation Group
POTC	Palm Oil Transparency Coalition
RAN	Rainforest Action Network
RBC	Responsible Business Conduct
RSP	Responsible Sourcing Policy
RSP0	Roundtable on Sustainable Palm Oil
SPKS	Serikat Petani Kelapa Sawit (Oil Palm Farmer Union)
SLAPP	Strategic Lawsuits Against Public Participation
SOP	Standard Operating Procedure
SPOTT	Sustainability Policy Transparency Toolkit
TCFD	Task Force on Climate-related Disclosures
TFA	Tropical Forest Alliance
TFND	Taskforce on Nature-related Financial Disclosures
UML	Universal Mill List (palm oil)
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNGP	UN Guiding Principles on Business and Human Rights
UN	United Nations
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (FAO and Committee on World Food Security)
WALHI	Wahana Lingkungan Hidup Indonesia (Friends of the Earth Indonesia)

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- since 2019 only discloses direct suppliers. Likewise, the earlier responsible sourcing policy has an explicit commitment to zero tolerance to land grabs, which appears to be no longer explicit in Unilever's updated P&N policy. There is some reference to indigenous people (not peoples), but no SOP.
- 310 Mention of Cargill "due diligence protocol" in its 2019 palm oil progress report, but no details found.
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- 340 <https://www.astra-agro.co.id/en/responsible-sourcing/> Note: AALI has a grievance mechanism, but it is unclear how grievances are tracked other than "Monitoring of the implementation of the action plan (that) will be carried out in a transparent and communicative manner" <https://www.astra-agro.co.id/mekanisme-keluhan-edited/>

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